

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

09:27:42 UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.) CRIM. NO. 2014-54
)
)
SHERRYMAE MORALES,)
)
Defendant.)
_____)

REPORTER'S TRANSCRIPT

DAY TWO

JURY TRIAL

08:35:44 Tuesday, June 30, 2015

BEFORE: THE HONORABLE CURTIS V. GOMEZ
District Judge

08:41:56 APPEARANCES: OFFICE OF THE UNITED STATES ATTORNEY
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Official Court Reporter
Virgin Islands District Court
St. Thomas, Virgin Islands

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EXHIBITS

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PROCEEDINGS

(Court called to order at 8:48 a.m. in USA v
Morales.)

(Jury not present.)

MR. POTTER: Good morning, Your Honor.

THE COURT: Good morning.

PRELIMINARY MATTERS

THE COURT: Has the -- how many more witnesses
does the government have?

MR. POTTER: The government has four more
witnesses, Your Honor.

THE COURT: These are non-cumulative witnesses?

MR. POTTER: That's correct, Judge.

THE COURT: All right. I know the defense
doesn't have to put on any witnesses. Does the defense
thinks it's inclined to put on any witnesses?

MR. JUPITER: Yes, Your Honor.

THE COURT: About how many do you think?

MR. JUPITER: I can estimate anywhere from five
to seven, Your Honor, but most of them will be very
short.

THE COURT: Okay. All right.

I notice on the proposed exhibit list the
government has a number of exhibits that seem to be of

08:49:49 1 the kind and species. Is the government planning to do
08:49:56 2 that in bulk? For instance, the exhibits with the
08:50:00 3 number 4 all seem to be orders. And those with the
08:50:06 4 number 3 as the prefix. Most of them seem to be pay
08:50:10 5 periods, I suspect pay period documents or sheets. And
08:50:21 6 the ones with a two...

08:50:30 7 That is, I don't anticipate the government is going
08:50:33 8 to go through each one by one.

08:50:35 9 MR. POTTER: It's a declaration, and we just
08:50:37 10 want to get to --

08:50:38 11 THE COURT: You need to speak into the
08:50:39 12 microphone.

08:50:41 13 MR. POTTER: Sorry. Government's Exhibit 3
08:50:43 14 comes with the certification of authenticity, and we
08:50:49 15 just want to move those in as --

08:50:52 16 THE COURT: Okay. Ordinarily there's a witness
08:50:54 17 who usually says what the thing is, not counsel
08:50:57 18 testifying. When counsel says what it is that you
08:51:03 19 proffer and then, for instance, a witness might indicate
08:51:06 20 that, they will say it's a certificate of whatever, and
08:51:15 21 then I suspect there will be no objection from the
08:51:17 22 defense as to the certificate under, under the series of
08:51:25 23 Rules of Evidence, and whether it's a business record or
08:51:27 24 public record or whatever theory you're bringing it
08:51:29 25 under.

08:51:29 1 Are you going to have someone on the stand saying
08:51:34 2 what it is, as opposed to you saying what it is?

08:51:36 3 MR. POTTER: That's not our intention, Judge.
08:51:37 4 We would just indicate the certification and move the
08:51:40 5 documents in, which we believe is a popular way to get
08:51:53 6 them in, Judge.

08:52:33 7 With respect to 3, Judge, I believe I have a
08:52:35 8 witness who can say what they are and then move them in
08:52:38 9 in that fashion, if that's the Court's preference.

08:52:47 10 THE COURT: It appears we're a juror short.
08:52:51 11 That's why we're not starting on time. So as soon as
08:52:54 12 that one arrives we'll start.

08:52:59 13 Yes, Attorney Jupiter.

08:53:01 14 MR. JUPITER: Your Honor, with respect to
08:53:02 15 Government's Exhibit 3.28 through 3 point --

08:53:10 16 THE COURT: Please close the door.

08:53:13 17 MR. JUPITER: -- 3.28 through 3.30, these are
08:53:18 18 related to severance pay. And we would object with
08:53:23 19 regard to relevance, as these were not payments
08:53:27 20 regarding the salary, I think that the government, I
08:53:36 21 think, has not laid a foundation for.

08:53:39 22 And similarly, with respect to payments that were
08:53:43 23 made between --

08:53:45 24 THE COURT: You're saying that -- let's deal
08:53:46 25 with them. 3.29 and 3.30 has a parenthetical that says

08:53:52 1 "severance." Are you saying that they are post- the
08:53:56 2 alleged crime?

08:54:05 3 MR. JUPITER: They're not, I don't think they
08:54:07 4 are post- -- some of them -- yes, Your Honor. They are
08:54:11 5 post- the crime --

08:54:12 6 THE COURT: All right.

08:54:13 7 Attorney Potter, if the crime is already completed,
08:54:15 8 why do you need that evidence in?

08:54:17 9 MR. POTTER: I don't believe that they are
08:54:18 10 post- the crime, Your Honor. This does represent
08:54:23 11 severance pay. And the only reason that this defendant
08:54:27 12 was able to get this severance pay, we are alleging, is
08:54:31 13 because she committing fraud by coming back into the
08:54:34 14 guard. Other than that, she would not have been
08:54:36 15 entitled to the severance pay reflected in 3.28 and
08:54:43 16 3.30.

08:54:46 17 THE COURT: All right.

08:54:46 18 Attorney Jupiter.

08:54:47 19 MR. JUPITER: Yes, Your Honor. I don't think
08:54:48 20 that there's been -- I would ask that the Court, if the
08:54:52 21 government seeks to admit these, that the Court would at
08:54:54 22 least take those under advisement and -- because I don't
08:55:00 23 think the government has sufficiently laid the
08:55:02 24 foundation for that.

08:55:05 25 THE COURT: We'll deal with it when we get to

08:55:07 1 it, then.

08:55:07 2 I think the juror is here, so we can get...

08:55:59 3 (Jury present.)

08:56:00 4 THE COURT: Good morning, ladies and gentlemen.

08:56:01 5 As you know, we're still in the government's
08:56:04 6 case-in-chief. The government is still presenting
08:56:07 7 testimony.

08:56:07 8 Is the government -- good morning, Counsel.

08:56:11 9 Is the government ready to proceed?

08:56:15 10 MR. POTTER: Can the government have one
08:56:17 11 second, Your Honor?

08:56:17 12 THE COURT: Yes.

08:56:35 13 (Pause.)

08:56:35 14 THE COURT: Call your next witness, Attorney
08:56:37 15 Potter.

08:56:38 16 MR. POTTER: Yes, Your Honor.

08:56:44 17 Your Honor, the government's first witness is
08:56:47 18 Colonel Lobbenmeier.

08:57:28 19 (Witness sworn.)

08:57:29 20 THE WITNESS: Yes.

08:57:31 21 THEREUPON, DEBORAH LOBBENMEIER, having been
08:57:32 22 duly sworn, was examined and testified as follows:

08:57:32 23 DIRECT EXAMINATION

08:57:33 24 BY MR. POTTER:

08:57:34 25 Q. Good morning.

08:57:35 1 A. Good morning.

08:57:36 2 Q. Could you please give us your full name for the
08:57:40 3 record, and spell your first and your last name for the
08:57:42 4 court reporter?

08:57:44 5 A. Deborah Lobbenmeier, D-e-b-o-r-a-h,
08:57:57 6 L-o-b-b-e-n-m-e-i-e-r.

08:58:01 7 Q. And how are you employed, Ms. Lobbenmeier?

08:58:04 8 A. I am currently employed as the United States
08:58:09 9 property and fiscal officer for the Virgin Islands
08:58:12 10 National Guard.

08:58:12 11 Q. And how long have you held that position?

08:58:15 12 A. I was appointed to that position 1 November 2014.

08:58:19 13 Q. And how long have you been a member of the Guard?

08:58:22 14 A. Approximately 22 years.

08:58:24 15 Q. You said you were the fiscal officer. What exactly
08:58:33 16 are your duties and responsibilities?

08:58:35 17 A. As the United States property and fiscal officer, I
08:58:38 18 am the only Title 10 officer that can receive the
08:58:42 19 federal funds and federal equipment for the Virgin
08:58:45 20 Islands National Guard.

08:58:54 21 Q. And in your position, are you considered the
08:58:56 22 custodian of records?

08:58:57 23 A. Yes, sir.

08:58:58 24 Q. Were you subpoenaed to retrieve certain documents
08:59:02 25 related to a Sherrymae Morales?

08:59:04 1 A. Yes.

08:59:13 2 MR. POTTER: Let me show you Government's
08:59:16 3 Exhibit 2 and ask you if you recognize it.

08:59:30 4 THE COURT: Take it off.

08:59:35 5 (Government's Exhibit 2.1 marked for
08:59:37 6 identification.)

08:59:37 7 BY MR. POTTER:

08:59:37 8 Q. Do you see Government's Exhibit 2?

08:59:39 9 A. I think it's coming up. Yes. Yes.

08:59:42 10 Q. Government's Exhibit 2 through Government's
08:59:58 11 Exhibit 2.27.

08:59:58 12 (Government's Exhibits 2.2 through 2.30 marked for
08:59:58 13 identification.)

09:00:21 14 BY MR. POTTER:

09:00:21 15 Q. I ask -- tell us if you recognize those.

09:00:23 16 A. Yes. Those are time and attendance sheets.

09:00:26 17 Q. And time and attendance sheet for who?

09:00:29 18 A. For Sherrymae Morales.

09:00:34 19 MR. POTTER: And actually, I think it's up to
09:00:37 20 2.30.

09:00:48 21 BY MR. POTTER:

09:00:48 22 Q. And all of the time sheets for Sherrymae Morales,
09:00:53 23 do you recall the period that those documents covered?

09:01:01 24 A. A period on -- from 2010 through '11.

09:01:21 25 Q. And are those records, are they kept in the regular

09:01:24 1 course of business?

09:01:25 2 A. Yes.

09:01:29 3 Q. And is it the regular course -- is it the regular
09:01:32 4 practice of the Virgin Islands National Guard to keep
09:01:33 5 such records?

09:01:34 6 A. Yes. That is the practice of my office. We have
09:01:37 7 to maintain those records.

09:01:41 8 Q. And are the records made at a time by someone with
09:01:48 9 knowledge of the information contained therein?

09:01:52 10 A. I'm sorry, could you repeat that question?

09:01:55 11 Q. The records, are they made at or near a time by
09:02:01 12 someone with knowledge of the information contained in
09:02:04 13 the records?

09:02:14 14 A. Is it --

09:02:14 15 Q. How are the records made?

09:02:16 16 A. How are the records made?

09:02:19 17 So, my office produces the time and attendance
09:02:23 18 sheets every two weeks, and they are sent out to the
09:02:27 19 supervisors; the supervisors, then, in turn, the
09:02:32 20 employees that they do supervise, they're the one that
09:02:36 21 would document their employees' time and attendance.
09:02:39 22 And once they sign off on that, that comes back to my
09:02:44 23 office to certify the pay to DFAS, to the Defense
09:02:51 24 Finance and Accounting.

09:02:52 25 Q. And is that a regular practice of the Virgin

09:02:55 1 Islands National Guard?

09:02:56 2 A. Yes.

09:02:56 3 Q. And those records are kept in the regular course of
09:03:01 4 business of the Virgin Islands National Guard?

09:03:03 5 A. Yes.

09:03:04 6 Q. And they are made at or near the time of
09:03:08 7 information transmitted from someone with knowledge
09:03:11 8 about what those --

09:03:13 9 A. Yes.

09:03:17 10 MR. POTTER: Your Honor, we move for the
09:03:18 11 admission of Government's Exhibit 2.1 to 2.30.

09:03:42 12 MR. JUPITER: May I voir dire the witness, Your
09:03:44 13 Honor?

09:03:44 14 THE COURT: No. Do you object, Attorney --

09:03:47 15 MR. JUPITER: Excuse me?

09:03:48 16 THE COURT: Do you have an objection.

09:03:49 17 MR. JUPITER: Yes, Your Honor. I have an
09:03:51 18 objection to them at this time. Proper foundation as to
09:03:56 19 it being a record of my client. I would like to voir
09:04:00 20 dire just to establish that.

09:04:01 21 THE COURT: All right. I'm going to take it
09:04:03 22 under advisement.

09:04:09 23 Go ahead, Attorney Potter.

09:04:10 24 BY MR. POTTER:

09:04:11 25 Q. Mr. Lobbenmeier, the documents 2.1 to 2.30, who are

09:04:19 1 they records of?

09:04:21 2 A. Sherrymae Morales.

09:04:22 3 Q. And where were the documents taken from?

09:04:26 4 A. From my office -- the -- you're talking about the
09:04:31 5 time and attendance?

09:04:34 6 Q. Yes.

09:04:35 7 A. Yes.

09:04:36 8 Q. And you have personal knowledge of that?

09:04:37 9 A. Yes.

09:04:41 10 MR. POTTER: Your Honor, again we move for
09:04:42 11 admission of Government's Exhibits --

09:04:44 12 THE COURT: Colonel, what does the time and
09:04:47 13 attendance reflect?

09:04:48 14 THE WITNESS: I'm sorry?

09:04:50 15 THE COURT: What does a time and attendance
09:04:53 16 record reflect?

09:04:54 17 THE WITNESS: It reflects on the time that an
09:04:59 18 employee worked throughout the day. Our work schedule
09:05:04 19 is from 8:00 to 5:00, so it would reflect on the time
09:05:06 20 that the employee worked.

09:05:11 21 THE COURT: All right. Attorney Jupiter?

09:05:15 22 MR. JUPITER: May I inquire on that, Your
09:05:17 23 Honor, in terms of whether my client --

09:05:19 24 THE COURT: No.

09:05:23 25 MR. JUPITER: My objection is -- my objection

09:05:24 1 is, is that it's entered as a record of my client, and
09:05:28 2 there's no evidence that my client has --

09:05:31 3 THE COURT: All right --

09:05:32 4 MR. JUPITER: -- doesn't --

09:05:34 5 THE COURT: I understand. Okay. Exhibits 2
09:05:37 6 point -- put 2.1 on.

09:05:52 7 MR. POTTER: Sorry, 2.2, Your Honor.

09:05:54 8 THE COURT: All right. Exhibits 2.2 to 2.30
09:06:00 9 are admitted.

09:06:00 10 (Government's Exhibits 2.2 through 2.30 admitted
09:06:10 11 into evidence.)

09:06:10 12 MR. POTTER: Can we publish 2.2 to the jury?

09:06:21 13 (Exhibit published.)

09:06:21 14 BY MR. POTTER:

09:06:22 15 Q. Mrs. Lobbenmeier, looking at Government's
09:06:27 16 Exhibit 2.2, tell us what that document is.

09:06:31 17 A. So this is a time sheet where it reflects on, that
09:06:38 18 the employee worked 80 hours for that time period,
09:06:43 19 and --

09:06:44 20 Q. Who is the employee?

09:06:45 21 A. Sherrymae Morales, which was certified by the
09:06:52 22 supervisor, Aubrey Ruan.

09:06:58 23 Q. Does it show regular time of employment?

09:07:01 24 A. Yes.

09:07:01 25 Q. And where does it show that?

09:07:06 1 A. If you -- if you look at where --

09:07:23 2 MR. POTTER: Excuse me, Your Honor. Is there a
09:07:27 3 pointer that the witness can use?

09:08:11 4 THE COURT: I don't believe we have one right
09:08:13 5 now, but we'll make sure that is taken care of.

09:08:15 6 You can proceed.

09:08:17 7 BY MR. POTTER:

09:08:17 8 Q. Does Government's Exhibit 2.2 reflect regular hours
09:08:20 9 worked?

09:08:21 10 A. Yes.

09:08:22 11 Q. And referring to the left -- or right side of the
09:08:29 12 exhibit, which --

09:08:31 13 A. Would be my left. And if you move over to the
09:08:36 14 second column, you would see the 80 hours reflected.

09:08:43 15 Q. Okay.

09:08:44 16 A. And "RG" depicts regular. That means the employee
09:08:49 17 worked those hours.

09:08:55 18 Q. Now, is that time sheet signed?

09:08:57 19 A. Yes. It was signed by the supervisor.

09:09:02 20 Q. So the signature on the top right?

09:09:05 21 A. Aubrey Ruan's signature.

09:09:14 22 Q. And who actually submitted the time sheet?

09:09:16 23 A. The supervisor submits them to our office.

09:09:30 24 Q. And once you get the time sheets, what do you do
09:09:32 25 with them?

09:09:33 1 A. The pay is certified with DFAS, the Defense Finance
09:09:39 2 and Accounting agency, and the employee will in turn be
09:09:47 3 paid.

09:09:53 4 Q. Now Government's Exhibit 2.2 through 2.28, with
09:10:03 5 respect to time sheets, are they all -- does it work the
09:10:06 6 same day, when documents are submitted --

09:10:08 7 MR. JUPITER: Objection. Leading.

09:10:09 8 THE COURT: Sustained.

09:10:13 9 BY MR. POTTER:

09:10:14 10 Q. With respect to the other Government Exhibits, 2.2
09:10:19 11 to 2.28, how are those processed through your
09:10:23 12 department?

09:10:26 13 A. Same manner. So what is -- okay. So if an
09:10:43 14 employee takes leave, the employee would then sign a
09:10:48 15 leave slip. And I think that was shown just now. The
09:10:52 16 timekeeper annotates on the time sheet whatever time
09:10:55 17 that the employee on -- may take.

09:11:00 18 Once that process is completed, the time is entered
09:11:03 19 into the system, where that time card that is reflected
09:11:07 20 there is produced and it's signed by the supervisor.
09:11:11 21 And it all gets submitted to our office for final
09:11:16 22 processing.

09:11:19 23 Q. And the time sheet itself, with respect to the
09:11:26 24 hours worked, who certifies the hours worked?

09:11:33 25 A. The supervisor.

09:11:36 1 Q. And where does the supervisor get the information
09:11:41 2 from?

09:11:42 3 A. Where does the supervisor get the information from?
09:11:44 4 Well --

09:11:45 5 MR. JUPITER: Objection, Your Honor.

09:11:46 6 THE COURT: Sustained. Ask the -- go ahead.
09:11:52 7 Sustained.

09:11:52 8 BY MR. POTTER:

09:11:56 9 Q. With respect to, with respect to pay, how does the
09:12:07 10 supervisor determine what hours to place on the time
09:12:13 11 sheet?

09:12:14 12 MR. JUPITER: Objection, Your Honor.

09:12:15 13 THE COURT: Sustained.

09:12:39 14 MR. POTTER: Court's indulgence, Your Honor?

09:12:41 15 THE COURT: Yes.

09:13:07 16 BY MR. POTTER:

09:13:07 17 Q. How do employees get paid?

09:13:12 18 A. Employees? So, the Virgin Islands National Guard
09:13:18 19 work schedule is from 8:00 to 5:00. And a two-weeks
09:13:26 20 period as a military technician, you would get paid for
09:13:31 21 80 hours, if those 80 hours were worked, and the
09:13:37 22 supervisor quoted as such on the time sheet.

09:13:41 23 Once that supervisor quote that employee as present
09:13:44 24 for duty, we in turn -- because the supervisor is the
09:13:49 25 one letting me know that that employee did work those

09:13:53 1 80 hours for that two-week pay period, we in turn would
09:14:01 2 release the paper for that employee.

09:14:11 3 Q. It seemed like a basic question, but the
09:14:14 4 supervisor -- what role does the employee play?

09:14:27 5 A. The role that the employee play is, I would say
09:14:33 6 show up to work and do their work, and the supervisor
09:14:36 7 who is supervising is the one attesting that they're
09:14:42 8 present on -- at work.

09:14:50 9 Q. Thank you.

09:14:54 10 Now you mentioned DFAS?

09:14:57 11 A. Yes.

09:14:57 12 Q. And tell us what DFAS is.

09:15:01 13 A. DFAS is the Defense Finance and Accounting agency
09:15:06 14 that process all the pay for the National Guard. So all
09:15:10 15 our payment of our employees, my office is the vehicle
09:15:15 16 to submit.

09:15:18 17 If I do not submit that final payment to DFAS, the
09:15:26 18 employee or whoever the individual may be will not be
09:15:34 19 paid. So we call the Disbursing Office to disburse the
09:15:39 20 funds to the employee.

09:15:40 21 Q. And how is that disbursement made?

09:15:42 22 A. The disbursement is made by way of electronic fund
09:15:46 23 transfer, because the Federal Government believes in
09:15:54 24 sure pay, and one of the ways to guarantee sure pay is
09:15:58 25 by way of electronic fund transfer.

09:16:16 1 MR. POTTER: Okay. Court's indulgence, Your
09:16:17 2 Honor?

09:16:17 3 THE COURT: Yes.

09:16:18 4 (Pause.)

09:16:18 5 BY MR. POTTER:

09:16:18 6 Q. Let me show you again Government's Exhibit 2.2, the
09:16:30 7 second page and the third page.

09:16:39 8 Let's go back to the second page.

09:16:41 9 Tell us what the second page is.

09:16:42 10 A. The second page is what is considered like a time
09:16:49 11 sheet. It's like a worksheet. It's what would -- our
09:16:56 12 office produces that to the supervisor or -- in advance
09:17:00 13 of the pay period. And so they use that to annotate as
09:17:06 14 the employee take or may not take leave.

09:17:13 15 Q. Okay. And the signature to the foot of the page?

09:17:17 16 A. Aubrey Ruan.

09:17:32 17 Q. And let me show you the third page. And tell us
09:17:39 18 what that is?

09:17:39 19 A. That is a leave slip. It's when an employee is
09:17:44 20 requesting for an approved absence from their work from
09:17:48 21 their supervisor.

09:17:49 22 Q. Okay. So, a leave slip for who?

09:17:51 23 A. For Sherrymae Morales.

09:18:01 24 Q. And do you see a signature of the employee on that
09:18:05 25 document?

09:18:06 1 A. Yes. It is signed by the employee and the
09:18:08 2 supervisor.

09:18:16 3 Q. Thank you.

09:18:23 4 Now, let me show you 2.20, and ask you if you
09:18:32 5 recognize it, and tell us what that is.

09:18:37 6 MR. JUPITER: Your Honor, object. That has not
09:18:39 7 been entered into evidence.

09:18:55 8 THE COURT: 2.2 to 2.30 are in evidence. I
09:19:00 9 think that's what the government moved.

09:19:01 10 Go ahead.

09:19:02 11 BY MR. POTTER:

09:19:02 12 Q. And tell us what 2.20 is.

09:19:07 13 A. 2.20 is the approved time sheet that was actually
09:19:14 14 entered into the system from the worksheet previously.
09:19:20 15 Then the system would produce on the time sheet as to
09:19:24 16 what was actually entered into our case system.

09:19:30 17 Q. Okay. And again that's for whom?

09:19:33 18 Which employee is that for?

09:19:35 19 A. Sherrymae Morales.

09:19:39 20 Q. And page 2?

09:19:46 21 A. It's the worksheet of time and attendance.

09:20:04 22 MR. POTTER: Court's indulgence?

09:20:12 23 (Pause.)

09:20:12 24 BY MR. POTTER:

09:20:12 25 Q. Now, what does that reflect?

09:20:15 1 The entry at the --

09:20:16 2 A. It reflects eight hours of annual leave. "LA" is
09:20:26 3 the code for annual leave.

09:20:28 4 Q. And again, for which employee?

09:20:30 5 A. Sherrymae Morales.

09:20:59 6 Q. Now, let me show you --

09:21:02 7 MR. POTTER: Court's indulgence.

09:21:15 8 BY MR. POTTER:

09:21:15 9 Q. -- the third page of 2.20. And tell us what that
09:21:22 10 is.

09:21:22 11 A. It is a leave slip -- a request for approved
09:21:27 12 absence for Sherrymae Morales, which was signed by the
09:21:31 13 supervisor, Aubrey Ruan.

09:21:38 14 Q. And does Sherry Morales's signature appear?

09:21:42 15 A. Yes, sir.

09:21:48 16 Q. Now, with respect to all of these exhibits, 2.2 --
09:21:57 17 2.2 to 2.30 -- 2.28, sorry, does the process work the
09:22:16 18 same, time sheet, the leave request form is attached?

09:22:22 19 A. So the process work -- how the process works, like
09:22:24 20 I said, my office would produce the worksheet for the
09:22:31 21 time and attendance.

09:22:35 22 Once the employee request leave, they do so with a
09:22:41 23 request for leave of absence. And once the supervisor
09:22:44 24 goes into the system and input our -- the time for that
09:22:48 25 pay period, then I think that was Exhibit 2.2, that's

09:22:55 1 what would produce the certified time sheet.

09:22:58 2 And that all comes to my office as a package to
09:23:03 3 substantiate pay for that, to certify the pay for that
09:23:07 4 employee.

09:23:07 5 Q. And are employees required to certify their time
09:23:15 6 sheets?

09:23:15 7 A. Employees are not required to certify their time
09:23:19 8 sheets. The certification is done by the supervisor.
09:23:22 9 Because the supervisor is the one that's attesting to
09:23:26 10 that, if that employee was present for duty or not.

09:23:30 11 Q. So the employee merely submits the time sheets?

09:23:33 12 A. Yes.

09:23:34 13 MR. JUPITER: Objection.

09:23:35 14 THE COURT: Sustained.

09:23:37 15 MR. JUPITER: Move to strike the answer.

09:23:41 16 THE COURT: The jury knows what to do when the
09:23:43 17 Court sustains an objection.

09:23:51 18 BY MR. POTTER:

09:23:51 19 Q. I still have to come back to one of my earlier
09:23:55 20 questions. And -- the supervisor certifies the time.
09:24:10 21 That was your testimony.

09:24:12 22 The time that is placed on the time sheet for the
09:24:17 23 supervisor to certify, who places that time?

09:24:23 24 Who says, "These are the hours that I worked"?

09:24:29 25 A. If the employee did not submit a time -- a request

09:24:34 1 for time and attendance, as the supervisor, or if my
09:24:43 2 employee was present for the --

09:24:45 3 MR. JUPITER: Object to the --

09:24:48 4 THE WITNESS: -- two weeks --

09:24:50 5 THE COURT: Hold on.

09:24:51 6 Go ahead. Ask your next question.

09:24:51 7 BY MR. POTTER:

09:25:09 8 Q. Now, the exhibit, Government Exhibit 2.20, the
09:25:16 9 third page, the leave that's requested, what's the date
09:25:21 10 requested for the leave?

09:25:22 11 A. February 25th, 2011. And that was for eight hours.

09:25:48 12 MR. POTTER: That might be all I have, Judge.
09:25:51 13 Court's indulgence?

09:25:52 14 THE COURT: Yes.

09:26:38 15 (Pause.)

09:26:38 16 BY MR. POTTER:

09:26:39 17 Q. So if an employee is requesting time off, that
09:26:42 18 information is related to the supervisor?

09:26:44 19 MR. JUPITER: Objection. Leading.

09:26:45 20 THE COURT: Sustained.

09:26:47 21 MR. POTTER: Thank you, Judge.

09:26:48 22 BY MR. POTTER:

09:26:48 23 Q. How is information relayed to a supervisor, if an
09:26:52 24 employee requires time off?

09:26:53 25 A. The employee is required to fill out an -- a form

09:27:02 1 for approved absence of leave, and the supervisor in
09:27:09 2 turn either approve or disapprove. That's the process.
09:27:15 3 Q. Is there any document with respect to basic time
09:27:20 4 and attendance, is there any document that an employee
09:27:25 5 fills out?
09:27:29 6 A. Yes.
09:27:29 7 Q. And what's that document?
09:27:31 8 A. The one that's on the screen currently, the request
09:27:38 9 for leave or approved absence.
09:27:43 10 Q. But just -- forget leave. Just regular attendance,
09:27:47 11 time and attendance?
09:27:49 12 A. For regular time and attendance, no, not that I'm
09:27:53 13 aware of.
09:28:03 14 MR. POTTER: I think that's all I have, Judge.
09:28:05 15 THE COURT: Attorney Jupiter?
09:28:17 16 MR. JUPITER: Good morning.
09:28:19 17 CROSS-EXAMINATION
09:28:20 18 BY MR. JUPITER:
09:28:21 19 Q. Good morning.
09:28:21 20 A. Good morning.
09:28:35 21 MR. JUPITER: Could you put up 2.20 again?
09:28:35 22 BY MR. JUPITER:
09:28:49 23 Q. Is it Major Lobbenmeier?
09:28:52 24 A. It's Colonel Lobbenmeier.
09:28:57 25 Q. You indicated that what we're seeing here on 2.20

09:29:02 1 is a leave of certification of hours for Ms. Morales,
09:29:08 2 correct?

09:29:08 3 A. Yes.

09:29:09 4 Q. Okay. And Ms. Morales, as you indicated, does not
09:29:18 5 submit this, right?

09:29:18 6 A. No. The supervisor submits it.

09:29:20 7 Q. As a matter of fact, it's not shown to her, is it?
09:29:22 8 Let me backtrack a little bit.

09:29:24 9 This document is produced by a computer program,
09:29:27 10 right?

09:29:27 11 A. Yes.

09:29:28 12 Q. Okay. And it's based on data that's input -- put
09:29:35 13 into the computer program, right?

09:29:37 14 A. Yes.

09:29:38 15 Q. And that data, only certain people have access to
09:29:41 16 that computer program, correct?

09:29:44 17 A. Yes.

09:29:45 18 Q. Not the employee?

09:29:46 19 A. No.

09:29:47 20 THE COURT: Excuse me for one minute. Attorney
09:29:50 21 Jupiter, tap your mike.

09:29:52 22 Go ahead.

09:29:54 23 MR. JUPITER: Is this better?

09:29:56 24 THE COURT: Yes.

09:29:56 25

09:29:56 1 BY MR. JUPITER:

09:29:57 2 Q. So the employee doesn't have access to put this
09:29:59 3 data in, correct?

09:30:01 4 A. No. There are controls in the system that does not
09:30:04 5 allow one's self to input their own time and attendance.

09:30:09 6 Q. Right. And the employer doesn't have, even have
09:30:14 7 the ability to access this information through computer,
09:30:18 8 right? The employee?

09:30:21 9 A. Who -- for employee, no. The employee doesn't have
09:30:27 10 the ability to access their own information.

09:30:29 11 Q. This isn't submitted through an e-mail to an
09:30:36 12 employee. It is only submitted to the employee's
09:30:39 13 supervisor?

09:30:39 14 A. That's correct.

09:30:39 15 Q. And the employee's supervisor is the only one who
09:30:42 16 certifies this?

09:30:43 17 A. That is correct.

09:30:45 18 Q. Okay.

09:30:45 19 MR. JUPITER: Now, can I have the next page of
09:30:47 20 that?

09:30:47 21 BY MR. JUPITER:

09:30:53 22 Q. This is the second page of Government Exhibit 2.20.
09:30:57 23 And this is also produced by computer program, correct?

09:31:05 24 A. That is correct.

09:31:06 25 Q. And is the computer program -- if you can look at

09:31:10 1 that top right-hand corner, that hours worked, 800 to
09:31:15 2 1700, military time for 8:00 a.m. to 5:00 p.m., right?

09:31:21 3 A. Yes.

09:31:21 4 Q. That is the only time in that computer program,
09:31:24 5 correct?

09:31:25 6 A. The time is set based on the organization work
09:31:31 7 schedule. So for the Virgin Islands National Guard, our
09:31:37 8 schedule is from 8:00 to 5:00.

09:31:39 9 Q. Okay.

09:31:40 10 A. Hence the system is set up as such. If we had a
09:31:45 11 different work schedule, then that would have been
09:31:49 12 reflected on that particular, on those time sheets.

09:31:51 13 Q. And that relates to every employee at the Virgin
09:31:54 14 Islands National Guard?

09:31:54 15 A. Those are the set hours for the Virgin Islands
09:31:57 16 National Guard.

09:31:57 17 Q. Okay. So in terms of, for instance, if someone is
09:32:03 18 employed by the National Guard and works under their
09:32:06 19 supervisor under a varied schedule, that couldn't be
09:32:13 20 reflected in this system, couldn't it?

09:32:15 21 A. It would have to be approved by personnel. They in
09:32:18 22 turn send the information over to us, so the system
09:32:21 23 would then have to be updated to reflect such.

09:32:27 24 Q. And if someone works either before or past
09:32:29 25 8:00 a.m. or 5:00 p.m., that's not going to be put into

09:32:32 1 the system, correct, even if they do that every day?

09:32:35 2 A. If they do that every day, no. However, the
09:32:40 3 employee may request what is called comp time,
09:32:43 4 compensatory time, and then that gets annotated on a
09:32:47 5 separate form.

09:32:48 6 Q. Including upper level employees?

09:32:55 7 A. It's up to the supervisor. I can't say.

09:33:01 8 Q. In terms of, you don't know --

09:33:03 9 A. I don't.

09:33:04 10 Q. Okay. For instance, you have salaried employees
09:33:07 11 there, correct?

09:33:09 12 I mean, they're salaried according to their grade
09:33:12 13 and step, right?

09:33:13 14 A. We do not have salaried employees. They all are on
09:33:17 15 general schedule.

09:33:18 16 Q. All right. But in terms of the lines that have the
09:33:29 17 days of the week, Sunday, Monday, Tuesday, Wednesday --
09:33:32 18 can you see that?

09:33:33 19 A. Yes.

09:33:34 20 Q. And you see below each one of those days, Monday
09:33:38 21 through Friday, AAAA?

09:33:42 22 A. Yes.

09:33:43 23 Q. Those are preset by the computer program, correct?

09:33:47 24 A. Again, that is based on the Virgin Islands National
09:33:50 25 Guard work schedule.

09:33:51 1 Q. Okay. What I'm saying is, this is something that
09:33:53 2 is part of this, this is preset by the computer. Nobody
09:33:57 3 has to change it. This is the default setting, right?

09:34:00 4 A. It is set that way because of how the Virgin
09:34:05 5 Islands National Guard established their work schedule.

09:34:08 6 Q. And this document is not sent to the employee, to
09:34:13 7 the particular employee, is it?

09:34:14 8 A. No. It goes to the supervisor and the timekeeper.

09:34:25 9 Q. So in terms of these records, with the exception of
09:34:31 10 the leave that's taken, the employee has no interaction
09:34:36 11 with the submission or the certification of those
09:34:40 12 records?

09:34:41 13 A. No.

09:34:46 14 MR. JUPITER: Your Honor, once again I ask the
09:34:48 15 Court to reconsider the admission of these records as
09:34:52 16 the records of Sherrymae Morales.

09:34:54 17 THE COURT: Okay. Very good. Thank you.

09:34:57 18 MR. JUPITER: No further questions.

09:34:58 19 THE COURT: Any redirect?

09:34:59 20 MR. POTTER: Yes, Judge.

09:35:01 21 REDIRECT EXAMINATION

09:35:02 22 BY MR. POTTER:

09:35:11 23 Q. You mentioned comp time.

09:35:16 24 A. Yes, sir.

09:35:16 25 Q. In reviewing the payroll of Sherrymae Morales, did

09:35:20 1 you see any --

09:35:21 2 THE COURT: Attorney Potter, can you speak into
09:35:23 3 the microphone?

09:35:25 4 BY MR. POTTER:

09:35:25 5 Q. In reviewing the records of Sherrymae Morales, did
09:35:29 6 you see any request that she made for comp time?

09:35:32 7 A. No, I did not recall seeing any request for comp
09:35:38 8 time.

09:35:38 9 Q. And was it your testimony that comp time has to be
09:35:41 10 approved by the supervisor?

09:35:43 11 A. Yes.

09:35:51 12 Q. And you again repeated that the regular work hours
09:35:57 13 is 8:00 to 5:00, Monday through Friday?

09:35:59 14 THE COURT: Okay. Let's not repeat this.
09:36:01 15 We've been over this already.

09:36:17 16 (Pause.)

09:36:17 17 BY MR. POTTER:

09:36:18 18 Q. Now, from your knowledge of the system, if the
09:36:20 19 defendant worked beyond 5:00 p.m. on any given date,
09:36:25 20 what should happen?

09:36:27 21 A. The employee can request full compensatory time,
09:36:34 22 and then that would be documented on the time sheet.
09:36:39 23 And that gets submitted on to our office, also. So the
09:36:43 24 time sheets would reflect the compensatory time, if the
09:36:47 25 employee requests it.

09:37:02 1 MR. POTTER: That's all I have, Judge.

09:37:04 2 THE COURT: I'll let you recross on the
09:37:08 3 compensatory time issue, if you wish to avail yourself.

09:37:15 4 MR. JUPITER: Thank you, Your Honor. Very
09:37:17 5 briefly.

09:37:18 6 RECROSS-EXAMINATION

09:37:18 7 BY MR. JUPITER:

09:37:18 8 Q. You said if the employee requested compensatory
09:37:21 9 time?

09:37:21 10 A. Yes.

09:37:22 11 Q. If the employee just works late all the time and
09:37:24 12 she doesn't -- that employee doesn't have to request
09:37:27 13 compensatory time, correct?

09:37:29 14 A. That is correct.

09:37:29 15 Q. And if the employee has an understanding, a working
09:37:35 16 relationship with their supervisor in terms of how
09:37:38 17 they're going to get their work done, as long as they
09:37:41 18 work eight hours a day, that's within the guidelines of
09:37:44 19 the Virgin Islands National Guard; is that correct?

09:37:47 20 A. I cannot answer that question. That's more the
09:37:54 21 personnel side.

09:37:55 22 Q. But you, in terms of when you talked about the
09:37:58 23 hours being restricted to 8:00 to 5:00, you're not
09:38:02 24 trying to say that if an employee works 80 hours in -- a
09:38:06 25 military technician, for instance, works 80 hours in a

09:38:10 1 two-period week, you're not trying to say that that
09:38:14 2 would be in violation of Virgin Islands National Guard
09:38:17 3 guidelines, are you?

09:38:18 4 A. Can you repeat that question, please?

09:38:23 5 Q. You're not trying to say if an employee works more
09:38:26 6 than 80 hours, particularly a military technician, works
09:38:32 7 more than 80 hours in a two-week pay period, that this
09:38:35 8 would be in violation of Virgin Islands National Guard?

09:38:39 9 MR. POTTER: Objection, Your Honor.

09:38:41 10 THE COURT: Overruled. If she knows.

09:38:43 11 BY MR. POTTER:

09:38:44 12 Q. Yes?

09:38:44 13 A. No, no, it would not be in violation of the Virgin
09:38:47 14 Islands National Guard policy.

09:38:49 15 Q. Thank you.

09:38:54 16 THE COURT: Any re-redirect?

09:38:58 17 MR. POTTER: Can we come to sidebar briefly,
09:39:00 18 Judge?

09:39:00 19 THE COURT: Not yet. Thank you.

09:39:04 20 MR. POTTER: Then I would have no further
09:39:05 21 questions of this witness --

09:39:07 22 THE COURT: Okay. Thank you.

09:39:08 23 Colonel Lobbenmeier, thank you for your testimony.
09:39:11 24 You may step down.

09:39:11 25 (Witness withdrew from stand.)

09:39:12 1 THE COURT: Next witness.

09:39:20 2 MR. POTTER: The next witness is Diane Mathis.

09:40:04 3 THE CLERK: Please stand and raise your right
09:40:05 4 hand to take the oath.

09:40:06 5 (Witness sworn.)

09:40:12 6 THE WITNESS: I do.

09:40:14 7 THEREUPON, DIANE MATHIS, having been duly
09:40:23 8 sworn, was examined and testified as follows:

09:40:23 9 DIRECT EXAMINATION

09:40:24 10 BY MR. POTTER:

09:40:24 11 Q. Good morning.

09:40:25 12 A. Good morning.

09:40:27 13 Q. Can you please give us your full name for the
09:40:30 14 record?

09:40:30 15 A. Diane Mathis.

09:40:33 16 Q. And then spell your first and your last name for
09:40:35 17 the court reporter?

09:40:36 18 A. D-i-a-n-e, M-a-t-h-i-s.

09:40:45 19 Q. And how are you employed?

09:40:46 20 A. I'm employed by USAA Federal Savings Bank in San
09:40:53 21 Antonio, Texas.

09:40:54 22 Q. And tell us what you do there.

09:40:55 23 A. I'm the custodian of records specialist. As the
09:40:59 24 custodian of records specialist, we process all incoming
09:41:03 25 subpoenas and requests on behalf of the bank.

09:41:06 1 Q. Were you issued a subpoena to research certain
09:41:09 2 documents for this court today?

09:41:10 3 A. Yes.

09:41:19 4 Q. And did you in fact do that?

09:41:21 5 A. Yes.

09:41:29 6 MR. POTTER: Let me show you Government's
09:41:38 7 Exhibit 9.2 through Government's Exhibit 9.20, and ask
09:41:50 8 you if you recognize it.

09:41:50 9 (Government's Exhibits 9.2 through 9.20 marked for
09:41:50 10 identification.)

09:41:50 11 BY MR. POTTER:

09:42:04 12 Q. Do you see the documents on the screen?

09:42:06 13 A. Yes.

09:42:19 14 Q. 2.3 [sic]?

09:42:21 15 A. Yes.

09:42:23 16 Q. 2.4 [sic]?

09:42:29 17 2.5 [sic]?

09:42:30 18 THE COURT: Are you saying "2"?

09:42:33 19 MR. POTTER: Sorry, 9.5. Sorry, Judge.

09:42:44 20 9.6.

09:42:45 21 THE COURT: Attorney Potter, do you need to go
09:42:47 22 through them or you have your technician go through the
09:42:50 23 numbers serially without you?

09:42:52 24 MR. POTTER: Okay.

09:44:37 25 THE COURT: What are you showing to the

09:44:39 1 witness?

09:44:40 2 MR. POTTER: 9 point --

09:44:41 3 THE COURT: I thought you said 9.2 to 9.20.

09:44:45 4 MR. POTTER: 9.20.

09:44:47 5 BY MR. POTTER:

09:44:48 6 Q. Do you recognize those documents?

09:44:51 7 A. Yes, sir.

09:44:51 8 Q. And what are those documents?

09:44:54 9 A. These are the monthly pay statements for the
09:44:59 10 accounts of Sherrymae Morales or Sherry Morales with
09:45:03 11 USAA Federal Savings Bank.

09:45:14 12 Q. And those documents, are they kept in the course of
09:45:18 13 business --

09:45:18 14 A. Yes.

09:45:19 15 Q. -- at your bank, USAA Bank?

09:45:21 16 A. Yes, sir.

09:45:24 17 Q. And tell us, where is your bank located?

09:45:26 18 A. It is located in San Antonio, Texas.

09:45:31 19 Q. And is it the regular practice of your bank to keep
09:45:36 20 those records in the regular course of business
09:45:40 21 activity?

09:45:41 22 A. Yes.

09:45:41 23 Q. And is a record of activities made at or near the
09:45:46 24 time, by or from information transmitted with someone of
09:45:51 25 knowledge?

09:45:51 1 A. Yes.

09:45:52 2 Q. And is it the regular practice of your bank to make
09:45:57 3 and keep such records?

09:45:59 4 A. Yes.

09:46:01 5 MR. POTTER: Your Honor, we move for the
09:46:03 6 admission of Government's Exhibit 9.2 to 9.20.

09:46:14 7 THE COURT: Is the government going to inquire
09:46:15 8 as to why the documents are relevant, time-wise?

09:46:19 9 MR. POTTER: Okay.

09:46:20 10 BY MR. POTTER:

09:46:20 11 Q. The documents -- what's the time period that those
09:46:28 12 documents reflect?

09:46:32 13 A. This statement I am looking at is -- can you
09:46:38 14 enlarge it a little, please?

09:46:50 15 MR. POTTER: Let's go back to Government's
09:46:53 16 Exhibit 9.2.

09:46:53 17 THE WITNESS: August 11, 2011.

09:47:01 18 BY MR. POTTER:

09:47:02 19 Q. I want to show you Government's Exhibit 9.2 and
09:47:05 20 tell me -- 2.3 [sic].

09:47:16 21 Okay. Can you tell me the time period of that
09:47:18 22 exhibit?

09:47:19 23 THE COURT: Did you say 2.3?

09:47:21 24 MR. POTTER: 9.3.

09:47:26 25 THE WITNESS: This is the monthly statement

09:47:27 1 from March 11, 2010.

09:47:31 2 BY MR. POTTER:

09:47:33 3 Q. And the, and that's the date of the first exhibit?

09:47:36 4 A. Yes.

09:47:36 5 Q. Now, the last entry that you researched, do you
09:47:42 6 recall what date that was for?

09:47:59 7 A. August 11, 2011.

09:48:01 8 Q. And is that the period that you did your research
09:48:04 9 for, with respect to the subpoena request for Sherrymae
09:48:07 10 Morales?

09:48:08 11 A. Yes.

09:48:14 12 MR. POTTER: The government moves for the
09:48:15 13 admission, Your Honor.

09:48:16 14 THE COURT: Attorney Jupiter?

09:48:17 15 MR. JUPITER: Your Honor, we object on -- we
09:48:19 16 object generally on 403. We also object with regard to
09:48:23 17 9.18, 9.19 and 9.20, as they're not relevant to the
09:48:32 18 charge -- there's no proper foundation for those. So
09:48:39 19 they're not relevant, at least at this time.

09:48:49 20 THE COURT: Which ones does the government seek
09:48:51 21 to have admitted? Is it 9.3?

09:49:05 22 Attorney Potter? Which ones did the government
09:49:09 23 seek to have admitted?

09:49:12 24 MR. POTTER: 9.2 to 9.20.

09:49:20 25 THE COURT: Put 9.2 on the screen.

09:49:58 1 All right. 9.3 to 9.19 are admitted.

09:49:58 2 (Government's Exhibits 9.3 through 9.19 admitted
09:49:58 3 into evidence.)

09:50:05 4 THE COURT: 9.20 is under advisement, as is
09:50:12 5 9.2.

09:50:12 6 (Government's Exhibits 9.2, 9.20 under advisement.)

09:50:20 7 THE COURT: Go ahead.

09:50:24 8 BY MR. POTTER:

09:50:26 9 Q. Ms. Mathis, let me show you Government's
09:50:31 10 Exhibit 9.2 for identification. And tell me what that
09:50:35 11 is.

09:50:43 12 A. This is a signature card for Sherry D. Morales, or
09:50:52 13 Rosa Shari Morales. They are account holders for USAA
09:50:58 14 Federal Savings account.

09:51:06 15 Q. And within the body of Government's Exhibit 9.2,
09:51:12 16 are there signatures?

09:51:13 17 A. Yes. The signatures are for Sherrymae D. Morales
09:51:19 18 or Rosa Shari Morales.

09:51:28 19 MR. POTTER: Move for the admission of
09:51:30 20 Government's Exhibit 9.2, Judge.

09:51:32 21 THE COURT: Attorney Jupiter?

09:51:33 22 MR. JUPITER: No objection, Your Honor.

09:51:34 23 THE COURT: 9.2 is admitted.

09:51:37 24 (Government's Exhibit 9.2 admitted into evidence.)

09:51:42 25

09:51:42 1 BY MR. POTTER:

09:51:42 2 Q. Ms. Mathis, let me show you

09:51:45 3 Government's Exhibit 9.2.

09:51:47 4 MR. POTTER: Can we publish, please.

09:51:47 5 (Exhibit published.)

09:51:57 6 BY MR. POTTER:

09:51:57 7 Q. Looking at Government's Exhibit 9.2 again, tell us
09:52:00 8 what that is?

09:52:01 9 A. This is a signature card amendment --

09:52:04 10 THE COURT: Hold on one second.

09:52:05 11 I think it is time for our morning break, ladies
09:52:08 12 and gentlemen. So we're going to break for ten minutes
09:52:11 13 and then we'll resume. All rise.

09:53:07 14 (Jury out.)

09:53:08 15 THE COURT: Ms. Mathis, we're going to take a
09:53:11 16 ten-minute break. Do not discuss your testimony during
09:53:15 17 the break. Do you understand?

09:53:16 18 THE WITNESS: Yes.

09:53:16 19 THE COURT: You need to be back on the witness
09:53:18 20 stand in ten minutes. Do you understand?

09:53:21 21 THE WITNESS: Yes, sir.

09:53:22 22 THE COURT: Okay. Counsel, ten minutes.

10:09:18 23 (Court in recess, 9:53 a.m.)

10:09:18 24 (After recess, 10:09 a.m., jury present.)

10:09:21 25 (Witness resumed stand.)

10:09:21 1 THE COURT: Go right ahead.

10:09:29 2 DIRECT EXAMINATION (Continued)

10:09:29 3 BY MR. POTTER:

10:09:30 4 Q. Good morning again, Ms. Mathis.

10:09:33 5 A. Good morning.

10:09:34 6 Q. Now, Government's Exhibit 9.3 to Government's
10:09:44 7 Exhibit 9.19, what do they show?

10:09:52 8 A. These are the monthly bank statements for the
10:09:56 9 deposit account of Sherry D. Morales or Rosa Shari
10:10:05 10 Morales. What they represent is all deposits and
10:10:07 11 credits to the account on a monthly basis.

10:10:14 12 Q. And when you presented these documents,
10:10:17 13 Government's Exhibit 9.2 to .9.19 -- let me show you for
10:10:34 14 identification purposes Government's Exhibit 9.21.

10:10:39 15 (Government's Exhibit 9.21 marked for
10:10:47 16 identification.)

10:10:47 17 MR. JUPITER: Your Honor, that has been
10:10:49 18 admitted, I believe.

10:10:50 19 THE COURT: What's your statement?

10:10:52 20 MR. JUPITER: I thought it was about to be
10:10:53 21 published, Your Honor. I withdraw the objection.

10:10:57 22 BY MR. POTTER:

10:10:58 23 Q. And tell us what Exhibit 9.21 is?

10:11:02 24 A. Could you enlarge it, please?

10:11:12 25 This is the deposit information into the account of

10:11:17 1 Sherry D. Morales. These are various deposit items for
10:11:23 2 various dates from DFAS Cleveland into her account at
10:11:34 3 USAA Federal Savings Bank in San Antonio, Texas.

10:11:48 4 Q. With respect to Government's Exhibit 9.3 to
10:11:51 5 Government's Exhibit 9.19, how does 9.21 relate to those
10:11:57 6 exhibits, or those documents?

10:12:01 7 A. This document outlines the deposits received into
10:12:07 8 the account from DFAS Cleveland, deposited -- electronic
10:12:15 9 deposits from DFAS Cleveland into the account of
10:12:19 10 Sherrymae Morales at USAA Federal Savings Bank for the
10:12:23 11 time period -- I need it enlarged.

10:13:06 12 It represents deposits from the time period
10:13:09 13 April 7th, 2010, through July 13th, 2011. These
10:13:17 14 deposits were made to USAA Federal Savings Bank account
10:13:22 15 number 1028022 for Sherrymae Morales.

10:13:29 16 Q. And where did you get Exhibit 9.21?

10:13:33 17 A. Government 9.21 has been received from the HCH
10:13:39 18 department of the bank. It's the area within the bank
10:13:42 19 that receives electronic deposits. And they have
10:13:47 20 researched each account to determine where the deposit
10:13:51 21 was originated.

10:13:58 22 MR. POTTER: Your Honor, we move for the
10:14:00 23 admission of Government's Exhibit 9.21.

10:14:02 24 MR. JUPITER: Your Honor, we object with
10:14:04 25 respect to 403, to have --

10:14:06 1 THE COURT: All right. It's under advisement.

10:14:15 2 BY MR. POTTER:

10:14:16 3 Q. Would Government's Exhibit 9.21 aid in your
10:14:19 4 presentation of the information contained in
10:14:23 5 Government's Exhibit 9.3 through Government's
10:14:29 6 Exhibit 9.19?

10:14:39 7 A. Excuse me. What were those numbers again? 9.3?

10:14:45 8 Q. 9.3 through 9.19?

10:14:49 9 MR. JUPITER: I'm a little bit uncertain as to
10:14:55 10 what records he's referring. In the reverse order?

10:14:59 11 THE COURT: Overruled. The question is for the
10:15:00 12 witness.

10:15:00 13 THE WITNESS: Yes. These deposits support the
10:15:04 14 monthly statements. These are deposits reflected on the
10:15:07 15 monthly statements.

10:15:21 16 BY MR. POTTER:

10:15:21 17 Q. Now, let's look at Government's Exhibit 9.3?

10:15:24 18 MR. POTTER: Can we publish, Your Honor?

10:15:26 19 (Exhibit published.)

10:15:26 20 BY MR. POTTER:

10:15:37 21 Q. And tell us what Government's Exhibit 9.3 is.

10:15:40 22 A. This is the March 11, 2010, monthly bank statement
10:15:43 23 for the account of Sherry D. Morales, or Rosa Shari
10:15:48 24 Morales.

10:15:53 25 Q. And on that document, referring you to the date

10:16:03 1 February 11th, 2011, what does that entry reflect?

10:16:22 2 A. The -- there's a deposit into the account on
10:16:27 3 February 11th, 2010, in the amount of \$1,806.90 from
10:16:38 4 military person direct.

10:16:53 5 (Pause.)

10:16:53 6 MR. POTTER: Court's indulgence, Your Honor?

10:16:55 7 THE COURT: Yes.

10:16:55 8 (Pause.)

10:16:55 9 BY MR. POTTER:

10:17:12 10 Q. Now, let me show you Government's Exhibit 9.4. And
10:17:22 11 tell us what that document is.

10:17:26 12 A. This is the monthly statement dated April 12th,
10:17:31 13 2010, for the deposit account of Sherry D. Morales or
10:17:35 14 Rosa Shari Morales.

10:17:37 15 Q. And referring you to the date April 7th, what does
10:17:44 16 that transaction -- what does that entry reflect?

10:17:49 17 A. On April 7th, 2010, there was a deposit into the
10:17:55 18 account in the amount of \$1,389.58, from DFAS Cleveland
10:18:09 19 fed salary.

10:18:23 20 Q. And let me draw your attention to the entry dated
10:18:29 21 April 8th. What does that entry reflect?

10:18:36 22 MR. JUPITER: Objection as to relevance, Your
10:18:39 23 Honor.

10:18:39 24 THE COURT: Overruled.

10:18:46 25 THE WITNESS: There's a deposit dated

10:18:49 1 April 8th, 2010, in the amount of \$1,806.90 from
10:19:00 2 military person direct deposit.

10:19:08 3 BY MR. POTTER:

10:19:08 4 Q. And the designation, "ACH"?

10:19:11 5 A. An ACH deposit is an electronic transaction where
10:19:17 6 the account holder has provided -- in our instance we
10:19:23 7 are the receiving bank of the deposit. They had
10:19:26 8 provided the originating bank the information where to
10:19:30 9 send the money. They provide the account number and the
10:19:32 10 routing number for the bank, so they can electronically
10:19:36 11 transfer the funds into the account.

10:19:41 12 Q. And you said electronic transfer. Is there another
10:19:44 13 word that you sometimes use in place of "electronic
10:19:48 14 transfer"?

10:19:49 15 A. Yes. It's referred to as an ACH transfer.

10:19:59 16 Q. And where is the DFAS -- if you can tell us from
10:20:03 17 the document, where is the DFAS bank located?

10:20:06 18 A. Cleveland.

10:20:06 19 Q. And where is your bank, USAA, located?

10:20:12 20 A. San Antonio, Texas.

10:20:19 21 Q. And let me show you Government's Exhibit 9.5. And
10:20:36 22 let me draw your attention to May 5th. Do you see that
10:20:44 23 entry?

10:20:44 24 A. Yes.

10:20:46 25 Q. And tell us what that entry represents.

10:20:49 1 A. On May 5th, 2010, there was a deposit in the amount
10:20:54 2 of \$3,417.40 from DFAS Cleveland fed salary.

10:21:09 3 Q. You said "DFAS Cleveland." Do you know what state?

10:21:12 4 A. Cleveland is in Ohio.

10:21:15 5 Q. Now, the entry May 6th -- sorry -- yeah, May 6th,
10:21:21 6 what does that entry represent?

10:21:23 7 MR. JUPITER: Object as to relevance.

10:21:26 8 THE COURT: Overruled.

10:21:31 9 THE WITNESS: On May 6, 2010, there was a
10:21:34 10 deposit into the account in the amount of \$1,806.90 from
10:21:43 11 military person direct deposit.

10:21:54 12 THE COURT: Let me see counsel at sidebar.

10:21:58 13 MR. POTTER: Yes, Judge.

10:21:59 14 (Sidebar discussion held as follows:)

10:22:04 15 THE COURT: Attorney Potter, it seems that
10:22:06 16 there are two entries, two ACH entries on every bank
10:22:14 17 statement from 9.3 to 9.19. Is there not a more
10:22:19 18 efficient way to address this?

10:22:22 19 These documents are already in evidence. You're
10:22:25 20 just having this person, through a method that's taking
10:22:29 21 quite some time, just read what is already in evidence.
10:22:33 22 She's doing it two times per each item. I suspect you
10:22:37 23 will go up to .19 with this.

10:22:39 24 MR. POTTER: Yes, Judge.

10:22:40 25 THE COURT: Is there a more efficient way to do

10:22:41 1 this?

10:22:42 2 MR. POTTER: Yes, Judge.

10:22:43 3 THE COURT: Okay. Let's try that.

10:22:45 4 (End sidebar discussion, open court as follows:)

10:22:59 5 BY MR. POTTER:

10:22:59 6 Q. Now, Ms. Mathis, with respect to Government's
10:23:03 7 Exhibit 9.6 to Government's Exhibit 9.19, do they all
10:23:18 8 contain electronic transfers?

10:23:26 9 A. Yes.

10:23:37 10 Q. And do they all contain the designation "DFAS
10:23:40 11 Cleveland"?

10:23:47 12 A. Yes.

10:23:48 13 I am looking at the May 11th, 2010 statement. Can
10:23:52 14 you please pull up the next page, in the next page?

10:23:56 15 Q. Well, without going through each -- well, yes. Can
10:24:00 16 you go through each of the exhibits and just verify
10:24:08 17 whether or not there are wire transfers, and the
10:24:10 18 specific date, and where they originated and where they
10:24:14 19 ended?

10:24:16 20 A. Yes. On July 12, 2010, there was a June 14th,
10:24:36 21 2010, -- I'm sorry, it's July -- June 16th, 2010, there
10:24:42 22 is a \$3,037.08 deposit from DFAS Cleveland fed salary.

10:24:54 23 On June 17th, 2010, there is a \$1,806.90 deposit
10:25:07 24 from military person direct.

10:25:19 25 June 30th, 2010, 3,037.09 from DFAS Cleveland fed

10:25:27 1 salary.

10:25:28 2 On July 1st, there's a deposit in the amount of
10:25:33 3 \$1,805.10 from military person direct.

10:25:52 4 THE COURT: Ms. Mathis, is it your testimony
10:25:54 5 that every place in these several bank statements where
10:25:57 6 we see -- where there's the three letter combination
10:26:03 7 ACH, that that is an electronic transfer?

10:26:06 8 THE WITNESS: Yes, sir.

10:26:07 9 THE COURT: Okay.

10:26:07 10 Anything else.

10:26:10 11 MR. POTTER: That's all we have.

10:26:12 12 THE COURT: Attorney Jupiter?

10:26:13 13 MR. JUPITER: We have no questions, Your Honor.

10:26:14 14 THE COURT: Ms. Mathis, thank you for your
10:26:16 15 testimony.

10:26:16 16 You may step down.

10:26:19 17 THE WITNESS: Sir, Your Honor, am I excused?

10:26:21 18 THE COURT: Is there any further need for
10:26:23 19 Ms. Mathis, Attorney Jupiter?

10:26:26 20 MR. JUPITER: No, Your Honor.

10:26:27 21 THE COURT: Attorney Potter?

10:26:28 22 MR. POTTER: No, Your Honor.

10:26:30 23 THE COURT: Ms. Mathis, you're excused. Thank
10:26:33 24 you.

10:26:33 25 THE WITNESS: Thank you.

10:26:34 1 (Witness excused.)

10:26:34 2 THE COURT: Next witness.

10:26:34 3 MR. POTTER: The next witness is Marise James.

10:27:09 4 THE CLERK: Please step into the witness box.

10:27:12 5 (Witness sworn.)

10:27:17 6 THE WITNESS: I do.

10:27:18 7 THEREUPON, MARISE JAMES, having been duly
10:27:19 8 sworn, was examined and testified as follows:

10:27:19 9 DIRECT EXAMINATION

10:27:21 10 BY MR. POTTER:

10:27:25 11 Q. Good morning.

10:27:26 12 A. Good morning, sir.

10:27:27 13 Q. Give us your full name for the record. Spell your
10:27:29 14 first and your last name for the court reporter.

10:27:32 15 A. My name is Marise James, M-a-r-i-s-e, James,
10:27:40 16 J-a-m-e-s.

10:27:40 17 Q. And tell us how you're employed.

10:27:42 18 A. I'm employed at the Virgin Islands National Guard.

10:27:45 19 Q. And what is your position there?

10:27:47 20 A. At the Guard, I am the JAG advocate and ethics
10:27:54 21 counselor.

10:27:54 22 Q. And how long have you been associated with the
10:27:56 23 Virgin Islands National Guard?

10:27:58 24 A. I joined in -- well, I took the oath in October of
10:28:05 25 2002, and then I became full-time in January of 2004.

10:28:13 1 Q. Do you know Sherrymae Morales?

10:28:18 2 A. Yes, I do.

10:28:19 3 Q. And tell us how you know her.

10:28:21 4 A. Well, I know her from growing up in Shepherd
10:28:26 5 Project first. And then I knew her later on around
10:28:34 6 1982. And then I came to know her when I entered the
10:28:40 7 Guard. So it's been a long time.

10:28:43 8 Q. Now, let me take you back to 2007. Were you
10:28:48 9 working with the Guard in 2007?

10:28:50 10 A. I was. I was full-time judge advocate or attorney.

10:29:00 11 Q. I should ask you, as the judge advocate, what are
10:29:03 12 your role -- what's your role?

10:29:05 13 A. As the staff judge advocate, I provide advice to
10:29:11 14 the adjutant, the United States property and fiscal
10:29:16 15 officer, the commanders and the different directors for
10:29:20 16 the staff.

10:29:21 17 I also supervise two part-time attorneys, and we
10:29:24 18 provide legal assistance, we provide briefings to
10:29:28 19 soldiers. Anything that involves the Guard, I'm the
10:29:32 20 person who would address the legal issues that come out
10:29:36 21 of anything in the Guard.

10:29:38 22 Q. In 2007, do you know how Ms. Morales was employed?

10:29:46 23 A. Yes, I do.

10:29:49 24 Q. How was she employed, from your knowledge?

10:29:52 25 A. She was employed as the ESGR coordinator in

10:29:57 1 November of 2007.

10:29:58 2 Q. Do you know how she came to get that position?

10:30:02 3 A. Yes, I do.

10:30:03 4 Q. And how did she?

10:30:06 5 A. At the time Elton Lewis was the chief of staff --
10:30:12 6 or director of joint staff. And at the time he was a
10:30:15 7 colonel. So Colonel Lewis came into my office and he
10:30:17 8 said that --

10:30:18 9 Q. You can't tell us what Colonel Lewis said,
10:30:21 10 particularly.

10:30:21 11 What happened -- as a result of him saying what he
10:30:27 12 said, what did you do?

10:30:28 13 A. I recommended Sherrymae Morales as the ESGR
10:30:32 14 candidate.

10:30:39 15 Q. And do you know what happened to your
10:30:41 16 recommendation?

10:30:41 17 A. He went to the person who called him on the phone
10:30:45 18 and asked -- and told --

10:30:48 19 Q. Okay.

10:30:49 20 A. Okay.

10:30:50 21 Q. You can't tell us what anybody said.

10:30:51 22 Was she hired, as far as you know?

10:30:53 23 A. She was. She was hired as the ESGR coordinator.

10:31:05 24 Q. And between 2010 -- sorry. Between 2007 and 2010,
10:31:15 25 did she hold that ESGR position, as far as you know?

10:31:23 1 A. Did she hold the position as ESGR from 2007 until
10:31:30 2 2010?

10:31:31 3 Not as far as I know. I deployed in 2009.
10:31:42 4 October 2009, I was not in the National Guard. I
10:31:45 5 belonged to the President of the United States at that
10:31:47 6 point.

10:31:47 7 So from 2007 until I deployed in October of 2009,
10:31:55 8 she was the ESGR coordinator.

10:32:02 9 Q. And you said you deployed. Where did you deploy
10:32:05 10 to?

10:32:05 11 A. I deployed to GITMO, to Guantanamo Bay.

10:32:09 12 Q. How long were you there?

10:32:10 13 A. I was there until November of 2010.

10:32:16 14 Q. And in December of 2010, tell us what happened --

10:32:22 15 A. Well, in --

10:32:23 16 Q. -- with respect to your deployment.

10:32:26 17 A. Well, we came back home in -- we came back home
10:32:32 18 November of 2010. And when I returned to the Virgin
10:32:37 19 Islands National Guard, at that point she was Major
10:32:46 20 Morales, working full-time for the Virgin Islands
10:32:47 21 National Guard.

10:32:48 22 Q. Do you know what position she held?

10:32:54 23 A. The, at that time she was the, I believe she was
10:32:59 24 the 5, the planner, strategic planning.

10:33:09 25 Q. Now, when you deployed from Cuba, did you have

10:33:13 1 contact with the defendant?

10:33:16 2 A. I wouldn't have contact with her during the week,
10:33:22 3 unless a legal issue came up.

10:33:24 4 The only other time that I -- early on, the only
10:33:27 5 other contact I had with her was when I came back home
10:33:32 6 from the deployment, we had a 30-day reintegration
10:33:41 7 training on St. Thomas, at Sugar Bay Resort, a 30-day
10:33:45 8 reintegration. And Major Morales, the TAG and a number
10:33:51 9 of people came over for the reintegration, the 30-day
10:33:57 10 reintegration.

10:33:57 11 Q. And what year do you recall this to be? The month
10:34:00 12 and year?

10:34:01 13 A. The month and year? December -- it was actually
10:34:05 14 December 4th and 5th of 2010. It was the 30-day
10:34:11 15 reintegration after we came back from the deployment,
10:34:14 16 November 2010. So 30 days after we had the
10:34:16 17 reintegration. And I saw -- they came over to do the
10:34:21 18 briefings to the soldiers who were back, and I was one
10:34:26 19 of the soldiers.

10:34:29 20 Q. And what, if any, conversation did you have with
10:34:33 21 the defendant at that time?

10:34:34 22 A. Well, when the TAG and Major Morales and others
10:34:40 23 came in, I said to her, "What are you doing here?"

10:34:44 24 Q. And what was her response?

10:34:45 25 A. She said she was an ESGR volunteer.

10:34:51 1 Q. Now, what was the reason that you would ask her,
10:34:54 2 "What are you doing here?"

10:34:55 3 A. Because when I came back in November, from November
10:35:00 4 to December, I returned to work. And she was the -- a
10:35:07 5 staff member. And a lot of the staff members, you don't
10:35:09 6 see them at the -- unless they're, for example, finance
10:35:13 7 or personnel, you wouldn't normally see somebody who is
10:35:17 8 in planning, or you wouldn't see the construction
10:35:19 9 facility officer at the reintegration. You would just
10:35:25 10 see certain people at the reintegration training.

10:35:34 11 Q. Okay. And did you have -- once she indicated that
10:35:38 12 response to you, did you have any further discussions
10:35:40 13 with her at that time?

10:35:41 14 A. No. Because I was a volunteer, too. I was an ESGR
10:35:45 15 volunteer. So it wasn't an unusual response to me,
10:35:50 16 because I knew she was working full-time now. And when
10:35:54 17 I was working full-time, I was an ESGR volunteer. So I
10:35:58 18 was like, oh, okay. And that was it. And then she did
10:36:02 19 the presentation, which, as always, was excellent.

10:36:14 20 Q. Now, in your role as the JAG, are you familiar with
10:36:24 21 the regular working hours for the National Guard?

10:36:27 22 A. Yes, I am.

10:36:29 23 MR. JUPITER: Objection, Your Honor.

10:36:31 24 THE COURT: Overruled.

10:36:34 25 THE WITNESS: 8:00 to 5:00; 8:00 a.m. to

10:36:38 1 5:00 p.m.

10:36:40 2 BY MR. POTTER:

10:36:41 3 Q. And --

10:36:41 4 A. Unless you're, unless you're AGR, which means that
10:36:47 5 -- an AGR soldier, an active guard reserve, you're 24/7.
10:36:55 6 You're always available.

10:36:55 7 Q. And was Ms. Morales an AGR?

10:36:59 8 A. No. She was a technician.

10:37:00 9 Q. Now, the hours of work, the regular hours of work
10:37:01 10 for the National Guard, is that reflected anywhere?

10:37:04 11 A. Yes.

10:37:06 12 Q. And where is that reflected? Where would it be
10:37:10 13 reflected?

10:37:10 14 A. Reflected?

10:37:14 15 MR. JUPITER: Your Honor, I would object as to
10:37:16 16 foundation for this, as well as relevance.

10:37:17 17 THE COURT: Sustained.

10:37:26 18 BY MR. POTTER:

10:37:26 19 Q. Let me show you --

10:37:39 20 MR. POTTER: Can I have a Government's Exhibit
10:37:42 21 sticker, if possible?

10:37:50 22 May I approach, Your Honor?

10:37:53 23 THE COURT: Yes.

10:38:09 24 MR. POTTER: Let me show you what I will mark
10:38:10 25 as Government's Exhibit 13, and ask you if you recognize

10:38:21 1 it.

10:38:21 2 (Government's Exhibit 13 marked for
10:38:21 3 identification.)

10:38:21 4 BY MR. POTTER:

10:38:30 5 Q. Do you recognize Government's Exhibit 13?

10:38:33 6 It should be in front of you.

10:38:35 7 A. Oh. Yes, I do.

10:38:36 8 Q. And tell us what that is.

10:38:37 9 A. That's the labor management relations agreement for
10:38:41 10 the technicians.

10:38:47 11 Q. And how are you familiar with Government's
10:38:52 12 Exhibit 13?

10:38:53 13 A. I am familiar with it because whenever there's an
10:38:56 14 issue with technicians, and because I am the lawyer at
10:39:00 15 the Virgin Islands National Guard, this is the agreement
10:39:03 16 that I would look to if we have to resolve any legal
10:39:08 17 issues that we may have, like absenteeism, performance.
10:39:16 18 I would look to make sure that we are following the
10:39:19 19 procedures in this agreement.

10:39:20 20 Q. And did you have occasion to review this
10:39:23 21 Government's Exhibit and determine whether or not that
10:39:26 22 was in existence in 2010?

10:39:29 23 A. Yes, it was.

10:39:36 24 Q. And in your reviewing it, were you able to
10:39:39 25 determine if it is, if it accurately reflects the labor

10:39:44 1 management agreement as you know it to exist --

10:39:51 2 A. Yes --

10:39:51 3 Q. -- in 2010?

10:39:52 4 A. Yes, it does, for the technicians.

10:40:00 5 MR. POTTER: Your Honor, we move for admission
10:40:01 6 of Government's Exhibit 13.

10:40:03 7 THE COURT: Attorney Jupiter?

10:40:04 8 MR. JUPITER: Yes, Your Honor. We object based
10:40:06 9 on --

10:40:06 10 THE COURT: Under advisement. 403.

10:40:15 11 MR. POTTER: Brief Court's indulgence, Your
10:40:18 12 Honor?

10:40:19 13 THE COURT: Yes.

10:40:40 14 (Pause.)

10:40:40 15 MR. POTTER: That's all we have for the
10:40:42 16 witness, Your Honor.

10:40:42 17 THE COURT: Attorney Jupiter?

10:40:44 18 CROSS-EXAMINATION

10:40:45 19 BY MR. JUPITER:

10:40:45 20 Q. Good morning.

10:40:46 21 A. Good morning.

10:40:47 22 Q. You are the, you advise the adjutant general at the
10:40:55 23 Virgin Islands National Guard?

10:40:55 24 A. Say that again, sir?

10:40:57 25 Q. Do you -- you advise the adjutant general at the

10:41:00 1 Virgin Islands National Guard?

10:41:01 2 A. Yes, I do.

10:41:02 3 Q. Okay. And you, you're responsible for the, you're
10:41:11 4 responsible for also advising commanders at the Virgin
10:41:18 5 Islands National Guard?

10:41:18 6 A. Yes, I do. If they ask for advice, I provide
10:41:24 7 advice. But they must first ask for it.

10:41:26 8 Q. Now with regard to -- you indicated that you were
10:41:30 9 aware that Ms. Morales had taken the ESGR position in
10:41:38 10 2007, correct?

10:41:39 11 A. Yes.

10:41:40 12 Q. And when you left in 2009, she still had that
10:41:46 13 position?

10:41:46 14 A. Yes, she did.

10:41:47 15 Q. And when you came back, I believe you said November
10:41:50 16 or December?

10:41:51 17 A. No, November of 2010.

10:41:53 18 Q. 2010?

10:41:53 19 A. Yes.

10:41:54 20 Q. You said Ms. Morales was working as a military
10:41:57 21 tech, correct?

10:41:57 22 A. Yes, she was.

10:41:58 23 Q. And she was a member in the Guard, correct?

10:42:00 24 A. Yes, she was.

10:42:01 25 Q. And this was not a -- she was not a civilian

10:42:04 1 technician, correct? Or she was not --

10:42:09 2 A. She was a civilian employee wearing the uniform.

10:42:13 3 So she was a military technician.

10:42:15 4 Q. Okay.

10:42:16 5 A. Okay.

10:42:17 6 Q. And the ESGR position, as far as you knew, always
10:42:23 7 had a director, correct?

10:42:25 8 A. Yes. As far as I knew, there was always a
10:42:29 9 director.

10:42:29 10 Q. All right. And you're familiar with the ESGR
10:42:33 11 contract, are you not?

10:42:35 12 A. No.

10:42:35 13 Q. You're not familiar with the ESGR contract?

10:42:38 14 A. No. When you say "familiar," the only time that I
10:42:41 15 saw the contract was as part of an investigation that
10:42:46 16 was done.

10:42:47 17 Q. Okay. Now, and you were tasked with -- what was
10:42:53 18 your role in that investigation?

10:42:55 19 A. Legal review.

10:42:56 20 Q. Okay. And you were to report to the adjutant
10:43:01 21 general with regards to that investigation?

10:43:03 22 A. I just do the legal review and I signed off on it.

10:43:07 23 Q. And who does that legal review go to?

10:43:09 24 A. To the adjutant general.

10:43:10 25 Q. Okay.

10:43:11 1 A. He -- the appointed authority is the adjutant
10:43:15 2 general for that investigation.

10:43:17 3 Q. Okay. You didn't do that investigation, did you?

10:43:19 4 A. I can't do investigations.

10:43:22 5 Q. Right.

10:43:22 6 A. I cannot.

10:43:23 7 Q. And you didn't?

10:43:24 8 A. No. No. I did not.

10:43:26 9 Q. And you -- but you did discuss it with the adjutant
10:43:34 10 general?

10:43:35 11 You discussed -- prior to your report you discussed
10:43:38 12 it with the adjutant general, correct?

10:43:40 13 A. No.

10:43:41 14 MR. POTTER: Objection, Your Honor.

10:43:43 15 THE WITNESS: No, I did not.

10:43:45 16 Discuss the investigation?

10:43:46 17 MR. JUPITER: Yes.

10:43:46 18 THE WITNESS: No. I would only be discussing
10:43:47 19 the investigation with the investigating officer.

10:43:52 20 BY MR. JUPITER:

10:43:52 21 Q. Okay. And -- so that would mean you would not, you
10:43:55 22 would not discuss it with anyone other than the
10:43:57 23 investigating -- thank you.

10:44:00 24 A. Right.

10:44:00 25 Q. Okay. Now I want to go back to November 2007.

10:44:04 1 A. Okay.

10:44:09 2 Q. Colonel Lewis contacted you about the ESGR
10:44:12 3 position, right?

10:44:12 4 A. Yes, he did.

10:44:13 5 Q. All right. And did he indicate that he needed
10:44:15 6 someone right away for the position?

10:44:16 7 A. He did.

10:44:17 8 Q. Okay. Now -- and were you privy to the
10:44:27 9 conversation on the telephone between Colonel Lewis and
10:44:30 10 Ms. Morales?

10:44:31 11 A. No, I was not.

10:44:35 12 Q. And after Ms. Morales took that position, you're
10:44:43 13 aware -- there was no space for her over at the VING
10:44:47 14 office, correct -- for her to work out of the Virgin
10:44:50 15 Islands National Guard headquarters at that time,
10:44:53 16 correct?

10:44:56 17 A. I wouldn't know. I wouldn't know that. But
10:44:59 18 contract workers don't necessarily have to work out of
10:45:03 19 the headquarters.

10:45:10 20 Q. And do you know that Ms. Morales did the ESGR work
10:45:14 21 out of her realtor office?

10:45:17 22 MR. POTTER: Objection.

10:45:19 23 THE WITNESS: No, didn't know, didn't know
10:45:20 24 that.

10:45:20 25 THE COURT: Sustained.

10:45:20 1 BY MR. JUPITER:

10:45:36 2 Q. And after -- when you came back in 2010, you didn't
10:45:39 3 have, you didn't have any interaction -- besides this
10:45:46 4 reintegration workshop, you didn't have any interaction
10:45:50 5 on a daily basis with Mr. Morales, did you?

10:45:56 6 A. The only interaction I would have on a daily basis
10:46:01 7 with any officer at the Guard is if they need my advice,
10:46:04 8 if they come to my office and need advice on anything.
10:46:07 9 So I would see everybody daily. You would see everybody
10:46:10 10 daily. But I'm in my office.

10:46:28 11 MR. JUPITER: No further questions, Your Honor.

10:46:30 12 THE COURT: Okay.

10:46:30 13 Any redirect?

10:46:31 14 MR. POTTER: No redirect, Your Honor.

10:46:32 15 THE COURT: Okay.

10:46:33 16 Attorney James, thank you for your testimony.

10:46:34 17 You may step down.

10:46:35 18 THE WITNESS: Thank you sir.

10:46:38 19 (Witness withdrew from stand.)

10:46:38 20 THE COURT: Next witness.

10:46:40 21 MR. POTTER: The government calls Dazarene
10:46:43 22 Lescott.

10:47:13 23 THE CLERK: Please stand and raise your right
10:47:15 24 hand to take the oath.

10:47:17 25 (Witness sworn.)

10:47:20 1 THE WITNESS: So help me God, yes.

10:47:25 2 THEREUPON, DAZARENE LESCOTT, having been duly
10:47:25 3 sworn, was examined and testified as follows:

10:47:25 4 DIRECT EXAMINATION

10:47:26 5 BY MR. POTTER:

10:47:26 6 Q. Good morning.

10:47:26 7 A. Good morning.

10:47:27 8 Q. Can you give us your full name for the record,
10:47:30 9 please, and spell your first and your last name for the
10:47:31 10 court reporter?

10:47:32 11 A. My name is Dazarene, it's spelled D-a-z-a-r-e-n-e.

10:47:40 12 Last name is Lescott; it's spelled L-e-s-c-o-t-t.

10:47:44 13 Q. And Ms. Lescott, where do you currently work?

10:47:48 14 A. I'm sorry?

10:47:49 15 Q. Where do you currently work?

10:47:50 16 A. I work with the Virgin Islands National Guard.

10:47:52 17 Q. And what position do you hold there?

10:47:53 18 A. I am currently their physical security specialist.

10:48:00 19 Q. And as a physical security specialist --

10:48:03 20 A. Physical security specialist.

10:48:05 21 Q. -- what do you do?

10:48:06 22 What are your duties?

10:48:07 23 A. Physical, for overseeing the Guard program, the
10:48:10 24 security guard program currently there. And also I
10:48:15 25 write and implement policies as it pertains to physical

10:48:20 1 security.

10:48:24 2 Q. Are you familiar with a company called the MPSC,
10:48:33 3 Military Personnel Services Corp.

10:48:33 4 A. Yes.

10:48:34 5 Q. And tell us how you are familiar with it.

10:48:36 6 A. I worked for MPSC from October 2010 through
10:48:46 7 August 2011, as their administrator support technician.

10:48:54 8 Q. As the administrative support technician, what did
10:48:58 9 you do?

10:48:59 10 A. I was part of the administrative support for the
10:49:04 11 ESGR program for that company.

10:49:10 12 Q. And how did you come to get that job?

10:49:13 13 A. I came back from deployment back in July 2010, and
10:49:21 14 attended our yellow ribbon program over at Divi Carina.
10:49:28 15 And Major Morales, she was the ESGR person that gave us
10:49:32 16 our ESGR briefing as we came back from deployment.

10:49:36 17 And I kind of explained to her that I was going
10:49:40 18 through some issues with my current job. So she
10:49:45 19 basically -- we spoke and she more or less kind of said
10:49:50 20 that --

10:49:51 21 Q. Don't tell us -- well --

10:49:52 22 A. Okay.

10:49:53 23 Q. No, go ahead. Tell us what she said.

10:49:57 24 A. She spoke and said that possibly there was
10:49:59 25 something in the pipelines, that the ESGR program was

10:50:01 1 working on getting a position on St. Thomas. And

10:50:06 2 because there was also an ESGR position on St. Croix, so

10:50:13 3 more than likely having two people, ESGR personnel on

10:50:15 4 both islands.

10:50:16 5 Q. Okay. And you were ultimately hired?

10:50:18 6 A. Yes.

10:50:19 7 Q. Who hired you?

10:50:20 8 A. Mr. Hignite.

10:50:22 9 Q. And how did that hiring occur?

10:50:27 10 A. Major Morales, I forwarded her my resume, and in

10:50:33 11 turn she forwarded it to Mr. Hignite and Mr. Hignite

10:50:37 12 contacted me. And we had an interview via phone for the

10:50:41 13 position.

10:50:43 14 Q. And do you recall what month and year it was that

10:50:47 15 you had this interview with Mr. Hignite?

10:50:51 16 A. The interview was contacted, say, the later part of

10:50:56 17 December 2010. My official start date was -- not

10:51:02 18 August -- October 4th, 2010.

10:51:07 19 Q. And were you full-time?

10:51:08 20 A. Yes.

10:51:09 21 Q. And what were your hours of work?

10:51:12 22 A. Monday through Friday, 8:00 to 5:00.

10:51:18 23 Q. And either at the time of your hire or prior to

10:51:24 24 your hire, was there any discussion with Mr. Hignite or

10:51:28 25 anyone else regarding what your hours of work would be?

10:51:35 1 A. I don't recall Mr. Hignite going over, say, the
10:51:43 2 hours possibly, not before. But after it was outlined
10:51:48 3 it would be 8:00 to 4:00, Monday through Friday, and
10:51:53 4 everything over it would be voluntarily.

10:51:55 5 Q. Did you have any conversation with Sherrymae
10:51:58 6 Morales regarding what the hours of work would be?

10:52:03 7 A. This was, as I said, too, after she more or less
10:52:07 8 outlined to say: Hey, we work 8:00 to 5:00, and if
10:52:11 9 anything over it will always be voluntarily. It's a
10:52:16 10 contract, and as contract employees we can't go over
10:52:21 11 40 hours a week.

10:52:25 12 Q. And what were the days of the week?

10:52:26 13 A. The days were basically Monday through Friday.

10:52:30 14 Q. And were you told anything with respect to working
10:52:36 15 outside of Monday through Friday?

10:52:38 16 A. If we did work outside Monday through Friday, it
10:52:40 17 would be on a voluntary purpose.

10:52:51 18 Q. Now, once you started -- let me ask you -- so you
10:52:58 19 were on St. Thomas?

10:52:59 20 A. Yes, I was.

10:53:00 21 Q. And Ms. Morales was on St. Croix?

10:53:03 22 A. Correct.

10:53:06 23 Q. And how often would you communicate with
10:53:10 24 Ms. Morales regarding work?

10:53:12 25 A. Myself and Major Morales, we usually communicated

10:53:16 1 daily, whether it be an e-mail or via telephone; but the
10:53:21 2 majority of the time via e-mail.

10:53:23 3 Q. And what would be the hours that you would
10:53:26 4 communicate with Ms. Morales when you're at work?

10:53:32 5 A. Between the hours of 8:00 to 5:00.

10:53:38 6 Q. And with respect to the days of the week, what
10:53:40 7 would be the days of the week that you would have
10:53:43 8 regular communications with Ms. Morales?

10:53:46 9 A. Regular communication is usually Monday through
10:53:50 10 Friday. If there's like any voluntary thing over the
10:53:54 11 weekend, but mainly Monday through Friday.

10:54:07 12 Q. And what were your -- as the -- you said AP --

10:54:12 13 A. AST.

10:54:18 14 Q. AST. So as the administrative support technician,
10:54:21 15 on a daily basis what would you do?

10:54:23 16 A. As the admin support technician, basically, more or
10:54:28 17 less try to organize, where I'll go out and meet or try
10:54:32 18 to bring in or educate employers, give them, make them
10:54:39 19 aware of what's going on with the ESGR program. I would
10:54:43 20 do some of the reports, get the reports ready. We would
10:54:47 21 call -- well, we do quarterly, like a PEPAS report, that
10:54:54 22 we have to support to the ESGR headquarters out in
10:54:58 23 Virginia.

10:54:58 24 Q. Who created the PEPAS report?

10:55:00 25 A. The PEPAS report, it came down from --

10:55:04 1 THE COURT: No, let's move on.

10:55:08 2 BY MR. POTTER:

10:55:08 3 Q. The work that you did for ESGR, who did you report
10:55:15 4 to?

10:55:16 5 A. The reports that I did, I forwarded to Major
10:55:20 6 Morales, which she in turn looked over and forwarded on,
10:55:24 7 or sent it back to me to forward on.

10:55:26 8 Q. Okay.

10:55:39 9 MR. POTTER: Let me show you what's been marked
10:55:40 10 as Government's Exhibit 11 for identification, and ask
10:55:51 11 you if you recognize it.

10:55:54 12 (Government's Exhibit 11 marked for
10:55:54 13 identification.)

10:56:05 14 BY MR. POTTER:

10:56:05 15 Q. Do you recognize Government's Exhibit 11?

10:56:26 16 A. Yeah.

10:56:27 17 Q. Tell us what that is.

10:56:28 18 A. It's monthly report that we --

10:56:35 19 THE COURT: Speak into the microphone, please.
10:56:37 20 You can pull it down towards you.

10:56:39 21 THE WITNESS: It's a monthly report that we
10:56:42 22 usually did at the end of every month, to show our
10:56:45 23 activity here within the territory, what goes on within
10:56:50 24 the town.

10:56:51 25

10:56:51 1 BY MR. POTTER:

10:56:52 2 Q. Were those report limited to St. Thomas, or St.

10:56:54 3 Thomas and St. Croix?

10:56:55 4 A. It was combined, a combined report for both

10:57:01 5 islands. Whatever we did, we combined everything on

10:57:05 6 that report.

10:57:09 7 Q. Did you ever travel to St. Croix for work?

10:57:11 8 A. Yes.

10:57:17 9 Q. How often would that be?

10:57:19 10 A. Sometimes every month, or every other month, if

10:57:22 11 it's -- depends on the funding that we have.

10:57:41 12 Q. Let's go back to Government's Exhibit 11. You

10:57:45 13 recognize that -- well, what do you recognize it as?

10:57:48 14 A. An e-mail that I sent to Major Morales, asking her

10:57:51 15 to look over the report.

10:57:53 16 Q. And does Government's Exhibit 11 accurately

10:57:56 17 reflect -- is it a fair and accurate representation of

10:57:59 18 the e-mail that you sent to Ms. Morales?

10:58:04 19 A. Yes.

10:58:04 20 Q. Any indication that it has been tampered with or

10:58:08 21 altered in any way?

10:58:11 22 A. No.

10:58:13 23 MR. POTTER: Your Honor, we move to admit

10:58:15 24 Government's Exhibit 11.

10:58:18 25 THE COURT: Attorney Jupiter?

10:58:20 1 MR. JUPITER: Your Honor, with redaction of the
10:58:21 2 top part, we don't object. I think the top --

10:58:27 3 THE COURT: Yes, I agree. All right.
10:58:29 4 Exhibit 11 is admitted, insofar as it reflects the
10:58:41 5 communications between the witness and Ms. Morales only.

10:58:59 6 (Government's Exhibit 11 admitted into evidence.)

10:58:59 7 MR. POTTER: May we publish, Your Honor?

10:58:59 8 (Pause.)

10:59:50 9 MR. POTTER: Can we publish now, Your Honor?

10:59:53 10 THE COURT: Yes.

10:59:57 11 (Exhibit published.)

10:59:57 12 BY MR. POTTER:

10:59:57 13 Q. So Ms. Lescott, tell us again what Government's
11:00:01 14 Exhibit 11 is?

11:00:01 15 A. It's a monthly report that I sent to Major Morales,
11:00:04 16 so she can look over for us to submit.

11:00:25 17 MR. POTTER: I think that's all I have, Your
11:00:28 18 Honor.

11:00:28 19 THE COURT: Attorney Jupiter?

11:00:30 20 CROSS-EXAMINATION

11:00:30 21 BY MR. JUPITER:

11:00:48 22 Q. I think it's afternoon by now -- no. Good morning.

11:00:53 23 A. Good morning.

11:00:54 24 Q. This Government's Exhibit Number 11, this is an
11:00:57 25 e-mail that you submitted to a government agent?

11:01:01 1 A. Yeah.

11:01:05 2 Q. And this was submitted to government agent at
11:01:08 3 government agent request, correct?

11:01:10 4 A. Correct.

11:01:11 5 Q. And you were contacted with reference to this
11:01:14 6 particular case, correct?

11:01:15 7 A. Correct.

11:01:16 8 Q. And you were told there was a criminal
11:01:18 9 investigation going on, correct?

11:01:19 10 A. Correct.

11:01:26 11 Q. And were you advised that there was some type of
11:01:30 12 illegality with regard to outside employment?

11:01:39 13 A. I'm sorry?

11:01:40 14 Q. Were you advised -- as part of the criminal
11:01:42 15 investigation, were you advised there was some
11:01:45 16 illegality with regard to outside employment?

11:01:48 17 MR. POTTER: Objection, Your Honor.

11:01:49 18 THE COURT: Sustained.

11:01:51 19 MR. JUPITER: Goes to bias, Your Honor.

11:01:53 20 THE COURT: 403. Rephrase.

11:01:58 21 MR. JUPITER: Okay.

11:01:58 22 BY MR. JUPITER:

11:01:59 23 Q. You were a -- you were an employee of Military
11:02:04 24 Personnel, MPSC, correct?

11:02:06 25 A. Correct.

11:02:07 1 Q. All right. And you had other employment at that
11:02:11 2 time?

11:02:12 3 A. No. I was -- if you're speaking in regards to my
11:02:17 4 membership in the Virgin Islands National Guard, I was
11:02:23 5 an entering soldier.

11:02:26 6 Q. Okay. And in regards to -- if you did -- you
11:02:31 7 indicated if you did work over the weekend, that would
11:02:34 8 be volunteer?

11:02:35 9 A. That would be voluntary.

11:02:36 10 Q. Okay. Now you had a system in which you did
11:02:39 11 timekeeping --

11:02:39 12 A. Correct.

11:02:41 13 Q. -- for MPSC, correct?

11:02:43 14 A. Correct.

11:02:44 15 Q. And weren't -- you couldn't put in time that you
11:02:49 16 did over the weekend, correct?

11:02:52 17 A. No.

11:02:53 18 MR. POTTER: Objection, Your Honor.

11:02:54 19 THE COURT: Overruled.

11:02:58 20 BY MR. JUPITER:

11:02:58 21 Q. You couldn't, right?

11:02:59 22 The system didn't allow you to put in your weekend
11:03:02 23 hours, right?

11:03:03 24 A. You had to put in 40 hours.

11:03:05 25 Q. Right?

11:03:05 1 A. Yeah.

11:03:06 2 Q. So if you did part of those 40 hours over the
11:03:08 3 weekend, did Mrs. Morales advise you that you needed to
11:03:13 4 put it in during the week?

11:03:15 5 MR. POTTER: Objection, Your Honor.

11:03:16 6 THE COURT: Sustained.

11:03:18 7 BY MR. JUPITER:

11:03:18 8 Q. Weren't you -- when you -- couldn't you put in
11:03:22 9 hours that you worked -- if you worked part of those
11:03:27 10 40 hours --

11:03:28 11 A. Uhm-hmm.

11:03:28 12 Q. -- outside of that 8:00 to 5:00 at the time,
11:03:31 13 couldn't you put it in as eight hours -- for that Monday
11:03:36 14 to Friday week?

11:03:39 15 A. Uhm-hmm.

11:03:40 16 Q. There was no violation for you saying -- for
11:03:42 17 instance -- as a matter of fact, let's look at this.
11:03:45 18 The top part indicates that this e-mail was sent by
11:03:50 19 Ms. Morales at 4:37 a.m., correct?

11:03:54 20 A. Correct.

11:03:54 21 Q. That wasn't at 8:00 -- that was before 8:00 in the
11:03:58 22 morning, right?

11:03:59 23 A. Yes.

11:03:59 24 Q. Okay. And the e-mail below that of June 6, 2011,
11:04:08 25 was at 7:55 p.m., correct?

11:04:11 1 A. Correct.

11:04:12 2 Q. And this was not -- this was work that you were
11:04:16 3 getting credit for, for your 40 hours a week, right?

11:04:19 4 A. Correct.

11:04:19 5 Q. And you would just put that in under the Deltek
11:04:25 6 system, you would just get credited for it during

11:04:28 7 8:00 -- as part of your 8:00 to 5:00 hours, right?

11:04:31 8 A. Correct. I don't see anything wrong with, if I
11:04:34 9 wanted to submit -- if a report is late and we wanted to
11:04:38 10 get it in, I don't see what's the issue if I decide to
11:04:42 11 send it at that time. But for that Deltek system,
11:04:46 12 40 hours had to be in that Deltek system.

11:04:49 13 Q. Right.

11:04:49 14 A. Yes.

11:04:50 15 Q. And so you weren't lying when you said, "I did
11:04:54 16 eight hours," even though you did it outside of 8:00 to
11:04:56 17 5:00, right?

11:04:57 18 A. Oh, no.

11:04:58 19 Q. Okay.

11:04:58 20 A. No.

11:04:59 21 Q. And, for instance, if this were -- similarly, as
11:05:03 22 part of that time was spent on the weekend, just because
11:05:06 23 the system didn't allow you to put part of your
11:05:09 24 eight hours on the weekend, you still put eight hours
11:05:12 25 in, if you did all 40 hours, right, even if part of that

11:05:16 1 was during the weekend, right?

11:05:17 2 A. During week?

11:05:18 3 Q. On the weekend?

11:05:19 4 A. On the weekend, as long as I did my 40 hours during
11:05:22 5 the week, the extra hours on the weekend was voluntary.

11:05:26 6 Nothing was recorded into that Deltek system.

11:05:33 7 Q. Now, you were -- your duties, number one -- first
11:05:49 8 of all, you were on St. Thomas this whole time, correct?

11:05:51 9 You only met with Ms. Morales face to face once a
11:05:55 10 month or once every other month; is that correct?

11:05:58 11 A. Uhm-hmm.

11:05:59 12 Q. You have to say yes or no.

11:06:01 13 A. Yes.

11:06:02 14 Q. Okay. And that meeting would generally last about
11:06:05 15 15, 30 minutes; is that correct?

11:06:11 16 A. When? Over here?

11:06:12 17 Q. Yeah.

11:06:13 18 A. No.

11:06:13 19 Q. How long did that meeting last?

11:06:15 20 A. Usually when I come over, I meet with Ms. Morales,
11:06:17 21 and we usually stay there until the afternoon hours, and
11:06:20 22 then I take a flight back over to St. Thomas.

11:06:24 23 Q. And with regard to your preparation of the reports,
11:06:30 24 you wouldn't do that with Ms. Morales, you would do that
11:06:33 25 by yourself, right?

11:06:34 1 A. I did that in St. Thomas and I send it over to
11:06:38 2 Ms. Morales via e-mail for her to look over.

11:06:40 3 Q. Okay. And you weren't aware when she would, when
11:06:44 4 she would review your reports, were you?

11:06:45 5 A. No.

11:06:46 6 Q. Okay. And you also indicated -- and so your -- you
11:06:55 7 would also do events with Ms. Morales, correct?

11:07:01 8 A. Correct.

11:07:02 9 Q. You participated -- and those, would you say the
11:07:06 10 majority of those events were over the weekend?

11:07:09 11 Correct?

11:07:10 12 A. Correct.

11:07:16 13 Q. You would communicate with Ms. Morales over the
11:07:18 14 phone, correct?

11:07:19 15 A. Yes.

11:07:19 16 Q. Those phone calls would usually be a couple minutes
11:07:22 17 long, wouldn't it?

11:07:23 18 A. Yeah.

11:07:37 19 Q. With respect to your -- who was your supervisor?

11:07:39 20 A. My supervisor, as I saw it, it was Major Morales.

11:07:43 21 Q. Okay. But actually it was supposed to be
11:07:45 22 Mr. Hignite, correct?

11:07:47 23 A. I wouldn't say that he was my direct supervisor.
11:07:53 24 He was basically the program manager for the contract.

11:07:58 25 Q. Okay.

11:07:58 1 A. So I saw Major Morales more as my supervisor.

11:08:02 2 Q. Okay. Now, these weren't the only e-mails that you
11:08:05 3 had with Mrs. Morales, were they?

11:08:09 4 A. No.

11:08:09 5 Q. These are the only ones you submitted, right?

11:08:13 6 A. I --

11:08:15 7 Q. To the investigator?

11:08:16 8 A. Uhm-hmm. Yes.

11:08:17 9 Q. Okay. And now you're a member of the -- a
11:08:30 10 full-time employee of the National Guard?

11:08:32 11 A. I'm the federal technician, correct.

11:08:34 12 Q. And you work in St. Thomas?

11:08:36 13 A. I work on St. Croix.

11:08:37 14 Q. You work on St. Croix?

11:08:38 15 A. Yes.

11:08:38 16 Q. And how long have you been working that position?

11:08:40 17 A. I started that position October of last year.

11:08:43 18 Q. And who is your -- October of last year?

11:08:46 19 A. Yes.

11:08:47 20 Q. Okay. And who is the TAG?

11:08:50 21 A. The TAG is General Rivera.

11:08:54 22 MR. JUPITER: No further questions.

11:08:55 23 THE COURT: Any redirect?

11:08:57 24 MR. POTTER: Yes, Judge.

11:09:04 25

REDIRECT EXAMINATION

BY MR. POTTER:

Q. You indicated that Ms. Morales supervised -- was your supervisor?

A. Yes. That's how I had her, as my supervisor, yes.

Q. And what hours of the day would she supervise you?

A. Not really to say she would supervise me. She would just say, "We have this to do," and she gave me the assignment, I run with it and then present it to her. She makes whatever corrections or whatever, tell me if it's good or not, and that's about it.

Q. And you say there were sometimes that there were events on the weekends?

A. There were some events on the weekends, and that was all voluntary.

Q. And how often would that have been?

A. That usually happens if there is like a unit returning from deployment, if we have, say, yellow ribbon. There were some other events, but we had those events during the week, so, if they didn't basically interfere with our workweek.

Q. And when you came to St. Thomas to meet with Ms. Morales, where would you meet her?

A. We would meet at the headquarters at VING. This is down at Four Corners.

11:10:30 1 Q. And when you met her, how would she be dressed?

11:10:32 2 A. She was in uniform.

11:10:34 3 Q. Military uniform?

11:10:36 4 A. Plaid V's, correct.

11:10:43 5 Q. As an employee of the MPSC, do you wear a military
11:10:48 6 uniform?

11:10:48 7 A. No. I wear civilian clothes.

11:10:59 8 Q. When you saw Ms. Morales in her military uniform,
11:11:04 9 did you ever ask her, "Why are you in military uniform?"

11:11:08 10 A. No, not really. Because --

11:11:12 11 THE COURT: Wait for the next question.

11:11:14 12 THE WITNESS: Okay.

11:11:30 13 BY MR. POTTER:

11:11:31 14 Q. In performing your function, did you speak to the
11:11:35 15 employers and employees on St. Croix, also?

11:11:40 16 A. Major Morales, she, she more or less handled
11:11:46 17 St. Croix.

11:11:56 18 Q. And finally, and when you were interviewed by
11:12:03 19 Mr. Hignite, and ultimately when you were hired, what,
11:12:07 20 if any -- did -- were there any discussions regarding
11:12:11 21 outside employment?

11:12:14 22 A. Basically --

11:12:16 23 THE COURT: Stop. You're asking if she had
11:12:18 24 discussions with someone other than Mrs. Morales?

11:12:22 25 MR. POTTER: Correct, Judge.

11:12:24 1 THE COURT: All right. Let's move on.

11:12:35 2 BY MR. POTTER:

11:12:35 3 Q. When you were hired, did you have any discussions
11:12:37 4 with Mrs. Morales concerning outside employment?

11:12:39 5 A. Only if we go over the 40 hours, it would be
11:12:44 6 considered voluntary.

11:12:49 7 Q. And at the time that you worked with Morales, did
11:12:56 8 she ever tell you that she was also a full-time Guard
11:13:00 9 member?

11:13:01 10 A. No.

11:13:11 11 Q. And how long -- when did you ultimately -- I think
11:13:18 12 your testimony is you were hired in September?

11:13:20 13 A. I was -- my official start date, October 4th, 2010.

11:13:28 14 Q. And when you were hired in October, how long did
11:13:30 15 you work with Mrs. Morales?

11:13:35 16 A. I worked with Major Morales through the ending of
11:13:39 17 July 2011.

11:13:42 18 MR. POTTER: Court's indulgence, Judge?

11:13:44 19 THE COURT: Yes.

11:13:56 20 (Pause)

11:13:56 21 MR. POTTER: No further questions, Judge.

11:13:58 22 THE COURT: All right.

11:14:00 23 Ms. Lescott, thank you for your testimony.

11:14:03 24 You may step down.

11:14:03 25 (Witness withdrew from stand.)

11:14:05 1 THE COURT: Next witness?

11:14:07 2 MR. POTTER: The government calls Gina Galle.

11:14:12 3 MR. JUPITER: Request permission to approach,
11:14:14 4 Your Honor?

11:14:14 5 THE COURT: Not yet, thank you.

11:14:23 6 MR. JUPITER: This is not one of the witnesses.
11:14:32 7 We object to this witness. She is not on the witness
11:14:34 8 list.

11:14:34 9 THE COURT: All right.

11:14:35 10 (Witness sworn.)

11:14:43 11 THE WITNESS: I do.

11:14:45 12 THEREUPON, GINA GALLE, having been duly sworn,
11:14:46 13 was examined and testified as follows:

11:14:46 14 DIRECT EXAMINATION

11:14:46 15 BY MR. POTTER:

11:14:47 16 Q. Good afternoon.

11:14:47 17 A. Good afternoon.

11:14:49 18 Q. Can you give us your full name for the record?

11:14:51 19 A. My name is Gina Galle. Last name is spelled
11:14:58 20 G-a-l-l-e.

11:14:58 21 Q. How are you employed?

11:15:00 22 A. I'm employed by the U.S. Army, Criminal
11:15:03 23 Investigations Command, the Major Procurement Fraud
11:15:06 24 Unit.

11:15:06 25 Q. And you're the agent on this case?

11:15:08 1 A. That's correct.

11:15:09 2 Q. And did you serve subpoenas --

11:15:13 3 A. I did.

11:15:14 4 Q. -- as a result of this case?

11:15:16 5 MR. POTTER: Let me show you Government's
11:15:27 6 Exhibit 3a for identification purposes.

11:15:42 7 (Government's Exhibit 3a marked for
11:15:42 8 identification.)

11:15:45 9 BY MR. POTTER:

11:15:45 10 Q. Can you tell us what Government's Exhibit 3a is?

11:15:51 11 A. This is a business records declaration from the
11:15:54 12 Defense Finance and Accounting Services.

11:16:00 13 Q. And how did you get that document?

11:16:02 14 A. I requested it from Defense Finance and Accounting
11:16:06 15 Services to certify time sheets -- I'm sorry -- payroll
11:16:09 16 records that they had.

11:16:19 17 Q. And does the document, Government's Exhibit 3a
11:16:23 18 accurately reflect -- is it an accurate representation
11:16:27 19 of the affidavit you received from the, from DFAS?

11:16:36 20 A. Yes, it is.

11:16:40 21 Q. Have there been any modifications or corrections to
11:16:43 22 it in any way?

11:16:44 23 A. No.

11:16:47 24 MR. POTTER: And Government's Exhibit 3.1 to
11:16:53 25 Government's Exhibit 3.30.

11:16:53 1 (Government's Exhibits 3.1 through 3.30 marked for
11:16:53 2 identification.)

11:16:57 3 THE WITNESS: That's correct.

11:16:58 4 BY MR. POTTER:

11:16:58 5 Q. What are those?

11:17:01 6 A. This is the master pay history provided to me from
11:17:05 7 the Defense Finance and Accounting Services for
11:17:08 8 Sherrymae Morales, beginning March 13th, 2010.

11:17:17 9 Q. And do those exhibits accurately reflect the
11:17:20 10 documents that you received from DFAS with respect to
11:17:23 11 your subpoena?

11:17:24 12 A. They do.

11:17:27 13 MR. POTTER: Your Honor, we move for the
11:17:28 14 admission of Government's Exhibit 3a, and 3.1 through
11:17:37 15 3.30.

11:17:38 16 THE COURT: Attorney Jupiter?

11:17:40 17 MR. JUPITER: Your Honor, no objection to 3a.

11:17:45 18 We object to 3.29 through 3.30. That is
11:17:56 19 irrelevant, improper -- no foundation.

11:18:00 20 And we object to the records for the periods
11:18:15 21 between June 30th, 2010, and September 27th, 2010, as
11:18:32 22 improper foundation -- I'm sorry -- as irrelevant and
11:18:45 23 improper foundation.

11:18:47 24 THE COURT: You say from June 30th, 2010, until
11:18:51 25 what period?

11:18:52 1 THE WITNESS: September 27th, 2010.

11:19:07 2 THE COURT: So that would be 3.9 and 3.10?

11:19:22 3 MR. JUPITER: That would be 3.9, 3.10.

11:19:32 4 THE COURT: In addition to 3.29 and 3.30; is
11:19:37 5 that right?

11:19:38 6 MR. JUPITER: Yes, Your Honor.

11:19:40 7 THE COURT: All right. 3.9, 3.10, 3.29, 3.30
11:19:47 8 are under advisement.

11:19:49 9 The rest are admitted.

11:20:03 10 Let me see counsel briefly at sidebar.

11:20:17 11 THE COURT: Okay. 3.9 and 3.10, does that
11:20:21 12 cover a period when she wasn't with the Guard?

11:20:30 13 MR. POTTER: It's a period when she -- oh, I'm
11:20:34 14 sorry.

11:20:34 15 (Pause.)

11:20:38 16 She had left the Guard, but the pay still reflects
11:20:42 17 pay that she received from the Guard for her period of
11:20:45 18 employment.

11:20:46 19 THE COURT: Okay. What about 3.29 and 3.30?

11:20:49 20 MR. POTTER: Same thing, Your Honor. It
11:20:51 21 reflects pay that she received from the Guard for her
11:20:57 22 employment.

11:20:57 23 THE COURT: Okay. You're saying your client
11:20:59 24 didn't receive pay for those periods?

11:21:02 25 MR. JUPITER: No. She received for --

11:21:04 1 THE COURT: For pay period --

11:21:05 2 MR. JUPITER: For the last ones? Which pay
11:21:08 3 period are you talking about?

11:21:09 4 THE COURT: 3.9, July 3rd, 2010, and July 17th,
11:21:14 5 2010.

11:21:14 6 MR. JUPITER: Your Honor, this is a period
11:21:17 7 that, where she was MPSC-- she was not employed with
11:21:21 8 MPSC.

11:21:22 9 THE COURT: Okay.

11:21:23 10 MR. JUPITER: And the other --

11:21:28 11 THE COURT: And the severance one, you have
11:21:30 12 issue with.

11:21:32 13 MR. JUPITER: The severance, yes, Your Honor.

11:21:34 14 THE COURT: All right. I'm going to allow 3.9,
11:21:37 15 3.10, 3.29, 3.30. I think defense's argument goes to
11:21:41 16 weight, not admissibility, at this point, given the
11:21:44 17 government's proffer.

11:21:45 18 All right. Thank you.

11:21:46 19 MR. JUPITER: Okay.

11:21:48 20 (End sidebar discussion, open court as follows:)

11:21:35 21 (Government's Exhibits 3a, 3.1 through 3.30
11:21:53 22 admitted into evidence.)

11:21:53 23 THE COURT: All right. Anything else for this
11:21:55 24 witness?

11:21:56 25 MR. POTTER: Yes, Judge.

11:22:06 1 Agent Galle, let me show you what's been marked
11:22:10 2 Government's Exhibit 5a for identification.

11:22:10 3 (Government's Exhibit 5a marked for
11:22:10 4 identification.)

11:22:10 5 BY MR. POTTER:

11:22:17 6 Q. Do you recognize that?

11:22:18 7 A. I do.

11:22:19 8 Q. Tell us what that is.

11:22:21 9 A. This is a business records declaration from the
11:22:26 10 Military Personnel Services Corporation for records I
11:22:28 11 obtained from them.

11:22:29 12 Q. And did you serve a subpoena on them?

11:22:33 13 A. They voluntarily provided the records.

11:22:35 14 Q. And these -- Government's Exhibit 5.a, does it
11:22:43 15 accurately reflect -- and is it an accurate
11:22:47 16 representation of the document that you received from
11:22:50 17 the MPSC--

11:22:55 18 A. Yes.

11:22:56 19 Q. -- for documents?

11:23:01 20 MR. POTTER: And Government's Exhibit 5.1
11:23:08 21 through 5.6. And Government's Exhibit 6.1 through 6.28.
11:23:29 22 And then Government's Exhibit 7.1 and 7.2.

11:23:29 23 (Government's Exhibits 5.1 through 5.6, 6.1 through
11:23:29 24 6.28, 7.1, 7.2, marked for identification.)

11:23:29 25

11:23:29 1 BY MR. POTTER:

11:23:37 2 Q. Are those documents that you received with respect
11:23:39 3 to the request that you made from the MPSC?

11:23:45 4 A. Yes.

11:23:49 5 Q. And are those documents reflected on the
11:23:51 6 certification that you received from MPSC, Government's
11:23:56 7 Exhibit 5a?

11:23:57 8 A. They are.

11:24:12 9 Q. And do the records accurately reflect the documents
11:24:14 10 that you received?

11:24:14 11 A. They do.

11:24:15 12 Q. Do you have any indication that they have been
11:24:17 13 altered, modified or changed in any way?

11:24:20 14 A. No.

11:24:27 15 Q. And with respect to Government's Exhibit 5a, is
11:24:30 16 that the extent of the documents that you received from
11:24:35 17 MPSC?

11:24:38 18 A. Yes.

11:24:40 19 MR. POTTER: Your Honor, we move for the
11:24:41 20 admissions of Government's Exhibit 5a -- sorry -- 5a,
11:24:52 21 5.1 to 5.6, 6.1 to 6.28, and 7.1 and 7.2.

11:25:23 22 THE COURT: Attorney Jupiter?

11:25:24 23 MR. JUPITER: Your Honor, we object to
11:25:29 24 Government's Exhibit 3 -- we do not object to
11:25:37 25 Government's Exhibit 5a, but we do object to it through

11:25:44 1 this witness, Your Honor.

11:25:45 2 We object to it. It's not proper foundation. We
11:25:49 3 object to the records in regard to relevance and with
11:25:54 4 regard to 403.

11:26:03 5 We have -- with respect to 5.6, and we have a Rule
11:26:13 6 16 objection.

11:26:16 7 With respect to 5.4, we object with regard to
11:26:22 8 relevance. And we have a general objection with regard
11:26:38 9 to authentication of all of the records.

11:26:58 10 THE COURT: Enlarge 5a.

11:27:00 11 MR. POTTER: I didn't hear the question, Judge.

11:27:02 12 THE COURT: Enlarge 5a.

11:29:39 13 All right. 6.23, 6.28 are admitted.

11:29:47 14 7.1 and 7.2 are under advisement.

11:30:00 15 Let me see 5.6.

11:30:06 16 (Government's Exhibit 6.23, 6.28 admitted into
11:30:18 17 evidence.)

11:30:18 18 THE COURT: And the same issues with all of
11:30:20 19 this. They're all small so...

11:31:13 20 All right. I believe 5.2 is already in. Is that
11:31:37 21 not already admitted?

11:31:51 22 All right. 5a. 5.1. 5.2 is already in. 5a and
11:31:58 23 5.1 are admitted. 5.3 and 5.4 and 5.6 are under
11:32:13 24 advisement.

11:32:16 25 5.5, put that on the screen, please.

11:33:32 1 All right. 5.5 is admitted also.

11:33:35 2 (Government's Exhibits 5a, 5.1, 5.5 admitted into
11:33:41 3 evidence.)

11:33:41 4 Anything else for this witness?

11:33:45 5 MR. POTTER: No, Your Honor.

11:33:45 6 THE COURT: Attorney Jupiter?

11:33:55 7 MR. JUPITER: No, Your Honor.

11:33:56 8 THE COURT: Ms. Galle, thank you for your
11:33:58 9 testimony.

11:33:58 10 You may step down.

11:33:58 11 (Witness withdrew from stand.)

11:34:00 12 THE COURT: Next witness?

11:34:06 13 MR. POTTER: I think that concludes the
11:34:08 14 government's case, Your Honor.

11:34:09 15 The government rests.

11:34:10 16 THE COURT: Ladies and gentlemen, the
11:34:10 17 government rests. That means that all the evidence in
11:34:13 18 this government's case-in-chief is now before you.

11:34:15 19 There's a brief matter I need to tend to, and then
11:34:18 20 we'll resume.

11:34:19 21 Let me see counsel at sidebar.

11:34:43 22 (Sidebar discussion held as follows:)

11:34:44 23 RULE 29 MOTION BY THE DEFENDANT

11:34:44 24 THE COURT: Attorney Jupiter, you want to be
11:34:46 25 heard?

11:34:47 1 MR. JUPITER: Yes, Your Honor.

11:34:48 2 At this time, pursuant to Rule 29 of the Federal
11:34:52 3 Rules of Evidence -- sorry -- Rule 29 of the Federal
11:34:56 4 Rules of Criminal Procedure, we ask for a motion of
11:34:58 5 dismissal as to all counts of the indictment.

11:35:04 6 With respect to counts 1 and 2 of the indictment,
11:35:12 7 they charge violations of 18 United States Code, Section
11:35:16 8 666, embezzlement of public money.

11:35:20 9 We, first of all, would reurge our motion to
11:35:26 10 dismiss those counts because these -- especially after
11:35:30 11 the testimony in this case, that Mrs. Morales was hired
11:35:34 12 to be a technician.

11:35:36 13 This was a hiring process that took place. She
11:35:41 14 applied for the position through the regular course of
11:35:46 15 how someone would be hired for the position. And she
11:35:50 16 was hired based on her qualifications. In fact, she was
11:35:55 17 the only applicant who was qualified.

11:35:59 18 There was also testimony that she performed her job
11:36:03 19 very well.

11:36:04 20 There was also testimony that she worked -- in
11:36:08 21 fact, Colonel Lewis, the government's witness, testified
11:36:11 22 that she worked far more than 80 hours, and at the time
11:36:16 23 that she went working was time that was spent working on
11:36:20 24 this government work.

11:36:21 25 The government has not shown that this is anything

11:36:26 1 other than payment for a salary.

11:36:29 2 This particular, under 18 USC, Section 666(c),
11:36:39 3 these two counts, when there's a bona fide salary as to
11:36:47 4 make up the amount, both thresholds with regard to the
11:36:52 5 program, the government program, as well as the amount
11:36:54 6 in controversy, excluded from that amount, is anything
11:36:58 7 of a bona fide salary.

11:37:01 8 So for those reasons and more we would ask for the
11:37:07 9 dismissal of those two counts.

11:37:08 10 We further ask for dismissal of those counts
11:37:10 11 because -- as well as all other counts, because there's
11:37:14 12 been no showing that Mrs. Morales obtained these,
11:37:19 13 obtained -- committed, oh -- I'm sorry -- committed
11:37:25 14 these offenses with any intent to defraud.

11:37:27 15 That would go, I believe, to all of the counts, but
11:37:30 16 particularly it would go to Counts 3 to -- although the
11:37:34 17 wire fraud counts would be Counts 3 through 36.

11:37:38 18 With respect to that, the government has to prove,
11:37:41 19 among other things, that there was a specific intent to
11:37:45 20 defraud. The defendant in this case, throughout --
11:37:49 21 through government's witnesses, the government spent a
11:37:52 22 great deal of time bringing in testimony regarding
11:37:57 23 Mrs. Morales's work with MPSC.

11:38:00 24 We would ask that the Court would note that in
11:38:03 25 response to his bill of particulars, the government has

11:38:06 1 stated that the victim in this case is the Virgin
11:38:09 2 Islands National Guard.

11:38:10 3 We would also indicate -- that was also indicated
11:38:13 4 in the indictment.

11:38:16 5 We also reurge the fact that in the indictment, the
11:38:20 6 government has not named what material misrepresentation
11:38:31 7 that they are relying on in this scheme to defraud. The
11:38:35 8 government says that the scheme to defraud began in
11:38:40 9 March or April of 2010, when Ms. Morales took the
11:38:47 10 military technician job.

11:38:51 11 The government's witness, Baron Hignite, indicated
11:38:56 12 that Mrs. Morales indicated at that time that she was
11:39:00 13 taking the military technician job in March of 2010.
11:39:09 14 And this would be consistent with someone who has
11:39:14 15 innocent intent.

11:39:16 16 The -- further, there's information showing that
11:39:21 17 there's no, there's no -- the Court cannot, I guess,
11:39:29 18 measure what the government is going on with respect to
11:39:34 19 the material misrepresentation, based on what's in the
11:39:40 20 indictment, because there was no material
11:39:43 21 misrepresentation named in the indictment.

11:39:46 22 Further, the indictment didn't indicate the
11:39:48 23 government was going to proceed or the grand jury
11:39:49 24 indicted on any type of material omission.

11:39:53 25 So the Court should not -- that should not enter

11:39:56 1 into the Court's analysis, because for Counts 3 through
11:39:59 2 36 there is -- the government obviously was not going
11:40:05 3 forward on material omission.

11:40:07 4 So any testimony about Mrs. Morales failing,
11:40:11 5 omitting something, some type of information, should not
11:40:13 6 be considered.

11:40:16 7 With respect to causing the wire to be made, this
11:40:23 8 goes with respect to the, Counts 3 through 36 as well as
11:40:31 9 Counts 37 and 38.

11:40:33 10 The testimony from Ms. Lobbenmeier indicated that
11:40:47 11 the employee has no role in the submission of the
11:40:50 12 documents regarding the documents with regarding to time
11:40:57 13 sheets. So certainly Counts 37 and 38 should be
11:41:04 14 dismissed, because Mrs. Morales, in terms of time sheet
11:41:09 15 for payment, plays no role in that. That is done -- she
11:41:13 16 doesn't even get a copy of it.

11:41:20 17 So the exhibits that the government submitted has
11:41:22 18 no relationship to anything that she did or caused to be
11:41:25 19 done, as the government's witness clearly establishes.

11:41:33 20 THE COURT: Okay. Thank you.

11:41:34 21 Attorney Potter, what's your position in response
11:41:37 22 to Counts 37 and 38?

11:41:47 23 MR. POTTER: With respect to those counts, Your
11:41:48 24 Honor, the defendant -- viewing the evidence in the
11:41:52 25 light most favorable to the government, the defendant

11:41:58 1 signed her leave slips, which are attached to the time
11:42:02 2 sheets, and she submitted those documents for payment.
11:42:06 3 And that alone is sufficient -- if nothing else, that
11:42:12 4 alone is sufficient for the charge to be sustained, Your
11:42:20 5 Honor.

11:42:20 6 She also wired -- the system at the V.I. National
11:42:26 7 Guard appears to be a solely electronic-generated
11:42:33 8 system. The supervisor affirmed that the person worked,
11:42:39 9 and those time sheets were submitted on behalf of the
11:42:44 10 defendant.

11:42:46 11 I think that's sufficient. The documents were
11:42:49 12 submitted on behalf of the defendant. She didn't
11:42:52 13 object. She didn't say, "Wait, no. I didn't, I
11:42:55 14 didn't -- I don't deserve it. I didn't earn that."

11:42:59 15 She affirmed it when the documents were submitted
11:43:03 16 by her supervisor for payment, and she received those
11:43:06 17 payments. And if -- and she knows when she received
11:43:10 18 that money, when she accepted that money, that would
11:43:13 19 have been a false document that caused her to be paid.

11:43:16 20 THE COURT: All right. At this stage, the
11:43:18 21 Court is required to view the evidence in the light
11:43:21 22 most --

11:43:21 23 MR. JUPITER: Your Honor, can I respond --

11:43:22 24 THE COURT: -- favorable to the government --

11:43:24 25 MR. JUPITER: I wasn't finished my argument

11:43:27 1 with respect to all of the counts.

11:43:31 2 Your Honor, with respect to the counts regarding
11:43:38 3 Counts Thirty- --

11:43:38 4 THE COURT: I thought you did. You said that
11:43:41 5 with respect to 37 and 38, you added that in with 36,
11:43:46 6 didn't you?

11:43:47 7 You have more to add on 37 and 38?

11:43:50 8 MR. JUPITER: No, I have more to add with
11:43:51 9 respect to the severance counts, the counts that relate
11:43:54 10 to severance pay.

11:43:55 11 There's been no foundation by the government
11:43:57 12 showing that the severance pay is in any way related to
11:44:01 13 this so-called scheme to defraud, because there's been
11:44:06 14 no attachments to what that severance pay is based on.

11:44:08 15 Further, they are counts -- the counts that relate
11:44:10 16 to payments made between June 30th and September 27th
11:44:17 17 are, if -- are counts that relate to the time period
11:44:25 18 when she wasn't working at MPSC.

11:44:29 19 THE COURT: All right.

11:44:30 20 Before the Court is the defense motion for Rule 29
11:44:32 21 relief. The Court is required to view the evidence in
11:44:34 22 the light most favorable to the government and give the
11:44:36 23 government all favorable inferences.

11:44:38 24 Using that standard, the Court finds that the
11:44:46 25 offenses alleged from Counts 1 through 36, those counts

11:44:50 1 will survive Rule 29 scrutiny. And so the petition is
11:44:54 2 denied with respect to those counts.

11:44:56 3 With respect to Counts 37 and 38, the Court will
11:44:59 4 grant the defense petition for Rule 29 relief.

11:45:03 5 All right. Thank you, Counsel.

11:45:05 6 MR. JUPITER: I didn't hear what you said; the
11:45:06 7 last two.

11:45:07 8 THE COURT: I granted your petition on the last
11:45:09 9 two.

11:45:09 10 Now, Attorney Jupiter, as I informed you, my
11:45:16 11 typical practice is to tell the jury that the defense
11:45:19 12 has no burden to present any evidence. Even so, to the
11:45:25 13 extent defense wishes to present any matters to them, we
11:45:28 14 do so. That's what I'm going to do. Then I'll turn to
11:45:31 15 you and ask if you have anything to present.

11:45:34 16 MR. JUPITER: Can I get two minutes, Your
11:45:39 17 Honor, to look at my witness and see where my witnesses
11:45:43 18 are?

11:45:44 19 THE COURT: You can have your paralegal do
11:45:48 20 that. Two minutes. It's hard to herd everyone after we
11:45:51 21 break, so...

11:45:53 22 (End sidebar discussion, open court as follows:)

11:46:57 23 MR. JUPITER: Your Honor --

11:47:00 24 THE COURT: Yes?

11:47:03 25 MR. JUPITER: -- can she use the bathroom?

11:47:04 1 THE COURT: Yes.

11:47:07 2 (Defendant not present.)

11:47:51 3 THE COURT: Let me see counsel briefly at
11:47:53 4 sidebar.

11:48:04 5 (Sidebar discussion held as follows:)

11:48:04 6 THE COURT: Attorney Jupiter, does your client
11:48:07 7 give permission to at least proceed with the preliminary
11:48:10 8 part, that you don't have to put on a case, while she's
11:48:13 9 not here?

11:48:15 10 MR. JUPITER: I --

11:48:17 11 THE COURT: If she didn't, we'll just --

11:48:19 12 MR. JUPITER: She didn't.

11:48:20 13 THE COURT: Okay. Then hopefully she'll be
11:48:29 14 back shortly, so we can resume in her presence.

11:50:15 15 (Pause.)

11:50:15 16 (Defendant present.)

11:50:17 17 THE COURT: Attorney Jupiter, your client is in
11:50:21 18 court?

11:50:21 19 MR. JUPITER: Yes, sir.

11:50:21 20 THE COURT: Very good.

11:50:22 21 Ladies and gentlemen, the government has rested.
11:50:25 22 That means all the evidence in the government's case is
11:50:27 23 now before you.

11:50:28 24 You may recall that the government has the burden
11:50:30 25 in a criminal case. The government always has the

11:50:32 1 burden. It never shifts.

11:50:33 2 That is, the defense never has to present any
11:50:36 3 evidence or any testimony for you during the course of
11:50:42 4 the case. That is because the burden is on the
11:50:44 5 government.

11:50:45 6 Even though we give defense an opportunity, if the
11:50:47 7 defense chooses to, to present any matters for your
11:50:51 8 consideration, this does not switch -- the burden does
11:50:54 9 not shift. The burden still remains with the
11:50:57 10 government.

11:50:57 11 Okay. Having said that...

11:50:59 12 Attorney Jupiter?

11:51:00 13 MR. JUPITER: Thank you, Your Honor. Your
11:51:01 14 Honor, we call Captain Wanda Williams.

11:51:24 15 THE CLERK: Please stand and raise your right
11:51:25 16 hand to take the oath.

11:51:30 17 (Witness sworn.)

11:51:31 18 THE WITNESS: I do.

11:51:32 19 THEREUPON, WANDA WILLIAMS, having been duly
11:51:40 20 sworn, was examined and testified as follows:

11:51:40 21 DIRECT EXAMINATION

11:51:41 22 BY MR. JUPITER:

11:51:41 23 Q. Good morning.

11:51:41 24 A. Good morning, sir.

11:51:42 25 Q. Could you tell us your name?

11:51:43 1 A. Captain Wanda Williams.

11:51:45 2 Q. And Captain Wanda Williams, where are you employed?

11:51:47 3 A. Say that again.

11:51:48 4 Q. Where do you work?

11:51:49 5 A. Virgin Islands Army National Guard.

11:51:50 6 Q. And are you a member of the Army National Guard?

11:51:53 7 A. Yes, sir.

11:51:53 8 Q. And what is your rank?

11:51:55 9 A. I'm a captain.

11:51:56 10 Q. And what do you do?

11:51:57 11 A. Currently, I'm the force integration readiness

11:52:00 12 officer.

11:52:01 13 Q. How long have you been in the Guard?

11:52:04 14 A. I've been in the Guard since December of 1997.

11:52:07 15 Q. And during -- in 2007, where were you?

11:52:14 16 A. I was here -- I was in Puerto Rico, assigned at

11:52:21 17 MEPS, San Juan MEPS.

11:52:22 18 Q. What's MEPS?

11:52:23 19 A. Military Entrance Processing Station.

11:52:25 20 Q. Do you know Sherrymae Morales?

11:52:27 21 A. Yes, I do.

11:52:27 22 Q. Do you see her in court today?

11:52:29 23 A. Yes, I do.

11:52:29 24 Q. Can you point her out?

11:52:30 25 A. She's right there (indicating).

11:52:31 1 Q. And Mrs. Morales -- how long you have known
11:52:34 2 Mrs. Morales?

11:52:35 3 A. I've known her for quite a while. She's familiar
11:52:38 4 to me through my mother. She worked with my mother. My
11:52:42 5 mother worked at the Superior Court -- that's now the
11:52:46 6 Superior Court. She worked at the Territorial Court.
11:52:49 7 I've known her for quite a while.

11:52:51 8 Q. Did there come a time when you came to work -- you
11:52:54 9 came to leave Puerto Rico?

11:52:56 10 A. Yes, I did.

11:52:57 11 Q. Okay. And what did you -- what were you -- where
11:53:02 12 did you go?

11:53:02 13 A. When I left San Juan as the MEPS guidance
11:53:05 14 counselor, I came back to St. Croix, reassigned to
11:53:09 15 St. Croix at the joint forces headquarters, where I
11:53:12 16 transitioned from an enlisted soldier to an officer, and
11:53:17 17 I was assigned as the officer branch chief for the
11:53:20 18 Virgin Islands National Guard.

11:53:20 19 Q. The officer branch chief?

11:53:21 20 A. Yes, sir.

11:53:22 21 Q. What were your duties as officer branch chief?

11:53:24 22 A. My responsibility was to manage and maintain all
11:53:26 23 officer records for the Virgin Islands National Guard.

11:53:28 24 Q. Okay. And what year was this?

11:53:32 25 A. This was in 2009. I was commissioned in 2008.

11:53:37 1 Q. Okay. What, if any, role -- well, let me ask you,
11:53:42 2 did you come into contact with Ms. Morales in terms of,
11:53:45 3 at the Virgin Islands National Guard after you returned?
11:53:48 4 A. Yes, I did.
11:53:49 5 Q. And was that in 2009?
11:53:52 6 A. Yes, I did.
11:53:52 7 Q. Okay. And what was she doing at that time?
11:53:54 8 A. She was the ESGR person. I saw her at the
11:54:01 9 headquarters building. And somewhere thereabouts,
11:54:05 10 towards the later part of that year, she was getting
11:54:08 11 ready to transition back into the Guard. She's a former
11:54:12 12 Guard member at that time.
11:54:17 13 Q. Okay. Now are you familiar with regard to what the
11:54:22 14 ESGR person does?
11:54:23 15 A. Yes.
11:54:23 16 Q. How are you familiar with that?
11:54:25 17 A. A former recruiter, that's what I did for
11:54:27 18 eight years for the Guard. Part of my job was to be
11:54:30 19 familiar with the ESGR program and its requirements, so
11:54:33 20 that I can further advise or assist soldiers in terms
11:54:37 21 of, if they had any type of employer conflicts or any
11:54:41 22 issues in terms of the military service duties.
11:54:45 23 Q. Okay. Now when you came to work, came back and she
11:54:48 24 was in the ESGR position, was she stationed -- where did
11:54:52 25 she do her work, if you knew?

11:54:54 1 A. At Mahogany Realty, down the street from the
11:54:57 2 headquarters building in Princess.

11:55:00 3 Q. Okay. And when you -- did you have occasion to
11:55:04 4 visit her over there, over that time period?

11:55:07 5 A. I believe I did, once or twice at the office, just
11:55:10 6 stopping by, or I would go to lunch in that area,
11:55:13 7 because there's a restaurant right next door. Then I
11:55:15 8 would stop in.

11:55:16 9 Q. Did there come a time when she was -- became
11:55:20 10 employed in another position at the Virgin Islands
11:55:23 11 National Guard?

11:55:24 12 A. Yes, she did, sir.

11:55:25 13 Q. And around when -- when was that?

11:55:27 14 A. Sometime in 2010, I believe she was reappointed
11:55:35 15 into the Army National Guard as a traditional soldier.
11:55:38 16 And then she obtained full-time employment as a -- we
11:55:42 17 call it the G5, where she worked as the strategic plans
11:55:48 18 and initiative officer.

11:55:50 19 Q. In regard to her role as the ESGR person, did you
11:55:53 20 see her continue to perform her duties as the ESGR
11:55:58 21 contractor?

11:55:58 22 A. At one point she was. But I know there was a lull
11:56:02 23 because she had gotten employment with the Guard. So I
11:56:09 24 guess she was transitioning out. And I also knew
11:56:12 25 because she -- there was an advertisement put out to

11:56:18 1 hire an ESGR person.

11:56:21 2 Q. Was she hired -- okay. Not getting to that part
11:56:24 3 yet, but in terms of when she became employed at the
11:56:29 4 Guard, did she continue to do her ESGR duties?

11:56:38 5 A. Yes.

11:56:40 6 MR. POTTER: Objection, Your Honor.

11:56:40 7 THE COURT: Sustained.

11:56:41 8 BY MR. JUPITER:

11:56:41 9 Q. Now after she was hired -- what was she hired as at
11:56:46 10 the Guard?

11:56:46 11 A. Strategics and initiative plans officer. That's
11:56:50 12 her title.

11:56:51 13 Q. Where was your office located with respect to her?

11:56:54 14 A. It was on the other side of the building.

11:56:57 15 Her office was -- if you're entering from the
11:57:04 16 outside of the building, her office was on the outside
11:57:06 17 and my office as closer to -- there was a restaurant
11:57:11 18 once by the headquarters building at Five Corners.

11:57:14 19 Q. And how long -- well, let me ask you this: Would
11:57:17 20 you be aware of how late she would work?

11:57:19 21 A. Yes, sir.

11:57:19 22 Q. How long would she be there till?

11:57:21 23 A. Sometimes till 8:00, 9:00 at night.

11:57:25 24 Q. How do you know that?

11:57:25 25 A. Because I was there until 8:00, 9:00 at night.

11:57:28 1 Q. And with respect to her, you said prior to that you
11:57:33 2 were familiar with her. After she was hired?

11:57:37 3 A. Yes.

11:57:38 4 Q. Okay. With respect to the ESGR position, did she
11:57:44 5 continue to hold that position?

11:57:45 6 A. Yes, she did.

11:57:47 7 Q. And how do you know she continued to hold that
11:57:49 8 position?

11:57:49 9 A. She would, from time to time -- I was also -- I was
11:57:52 10 the branch chief, but I was also like assistant to the
11:57:55 11 personnel, director of personnel.

11:58:00 12 So from time to time my boss was not able to attend
11:58:04 13 staff meetings, I would go in and brief or represent her
11:58:06 14 at whatever meetings, or him, whoever it was at the
11:58:09 15 time.

11:58:09 16 And she would be in there. And depending on what
11:58:13 17 status she was in, she would be in there briefing on
11:58:18 18 ESGR.

11:58:19 19 Q. Okay. Now talking about these briefings, are these
11:58:22 20 the briefings -- this is during 2010. Who was the chief
11:58:26 21 joint staff at that time?

11:58:28 22 A. I want to say it was George, Kelvin George. And
11:58:36 23 they transitioned into Elton Lewis, Colonel Lewis.

11:58:39 24 Q. Okay. And when would these staff meetings occur?

11:58:43 25 A. Every Tuesday at 8:30.

11:58:45 1 Q. All right. And what would -- what areas would
11:58:51 2 Ms. Morales brief on?

11:58:54 3 A. She would brief on the G5, which is the position
11:58:57 4 that she held as a technician. And I have heard her
11:59:00 5 brief on ESGR matters.

11:59:04 6 Q. Now, with respect to whether or not -- while she
11:59:07 7 had the military tech position, who was her supervisor?

11:59:18 8 A. As far as the military technician position?

11:59:21 9 Q. Yes.

11:59:21 10 A. The full-time post is managed by the chief of
11:59:25 11 staff, whoever that was at that time.

11:59:38 12 Q. Would you -- during this time period after she was
11:59:44 13 hired as a military tech position, were you familiar
11:59:49 14 with any other ESGR work she continued to do?

11:59:52 15 A. Yes. I took part in a bus lift event that took
11:59:59 16 place in San Juan, Puerto Rico, Camp Salinas -- Camp
12:00:04 17 Santiago in Salinas, Puerto Rico.

12:00:07 18 And then there was also an event over there at The
12:00:10 19 Palms, I think that's what it's called now, where she
12:00:12 20 had an employer, I guess, appreciation luncheon.

12:00:17 21 Q. Okay. And your understanding was she was
12:00:21 22 holding --

12:00:24 23 MR. POTTER: Objection, Your Honor. Leading.

12:00:25 24 THE COURT: Sustained.

12:00:28 25

12:00:28 1 BY MR. JUPITER:

12:00:29 2 Q. What was your understanding with regard to her role
12:00:33 3 as ESGR?

12:00:34 4 A. She was still participating in that program and
12:00:36 5 still functioning as the ESGR rep.

12:00:40 6 MR. JUPITER: I tender the witness, Your Honor.

12:00:41 7 THE COURT: Attorney Potter?

12:00:44 8 CROSS-EXAMINATION

12:00:44 9 BY MR. POTTER:

12:00:51 10 Q. Good morning, Captain.

12:00:51 11 A. Good morning, sir.

12:00:59 12 Q. The time frame that you are referencing in your
12:01:02 13 testimony, what time frame is it?

12:01:05 14 A. Which time frame?

12:01:07 15 Q. Yes. When you testified that she's performing ESGR
12:01:13 16 functions as well as military tech functions?

12:01:16 17 A. Yes.

12:01:17 18 Q. What time frame is she doing this?

12:01:19 19 A. That was, had to be between 2010 -- because I came
12:01:23 20 from Puerto Rico in 2009. So anywhere between late
12:01:28 21 2009, when I came back from my officer basic course, all
12:01:32 22 the way up until 2010 time frame.

12:01:37 23 Q. And she never told you that she was being paid for
12:01:41 24 both positions, did she?

12:01:44 25 A. I don't think we've ever had that kind of

12:01:48 1 discussion.

12:01:55 2 Q. Is it unusual for individuals who performed ESGR
12:02:01 3 functions within the Guard to at times volunteer to
12:02:05 4 perform certain activities?

12:02:07 5 A. I don't understand your question.

12:02:09 6 THE COURT: Are you asking the witness for an
12:02:11 7 opinion? Or just testify on facts, since she's a fact
12:02:18 8 witness?

12:02:20 9 MR. POTTER: Yes, Judge.

12:02:21 10 BY MR. POTTER:

12:02:21 11 Q. You are aware, aren't you, that members of the
12:02:24 12 Guard volunteer ESGR functions?

12:02:28 13 A. Yes. As a matter of fact, the chairman at that
12:02:31 14 time, who was Mitchell, he was a traditional guardsman,
12:02:36 15 and he was actually, I guess, the chairman of the ESGR.
12:02:41 16 But we currently have board members that volunteer for
12:02:44 17 the ESGR.

12:02:57 18 MR. POTTER: No further questions -- one
12:03:00 19 second, Judge.

12:03:00 20 (Pause)

12:03:03 21 MR. POTTER: No further questions of the
12:03:04 22 witness, Your Honor.

12:03:04 23 THE COURT: Any redirect?

12:03:04 24

12:03:08 25

12:03:09 1 REDIRECT EXAMINATION

12:03:09 2 BY MR. JUPITER:

12:03:20 3 Q. What -- the functions that you saw Mrs. Morales
12:03:32 4 doing were with respect, with respect to ESGR, were they
12:03:42 5 volunteer activities, or were they for the contract
12:03:48 6 position?

12:03:48 7 MR. POTTER: Objection. Leading, Your Honor.

12:03:52 8 THE COURT: Sustained.

12:04:01 9 BY MR. JUPITER:

12:04:01 10 Q. How would you characterize what you observed
12:04:05 11 Mrs. Morales doing in the ESGR position after she was
12:04:07 12 hired --

12:04:07 13 MR. POTTER: Objection.

12:04:08 14 BY MR. JUPITER:

12:04:08 15 Q. -- by -- as a military technician?

12:04:11 16 THE COURT: Okay. Overruled.

12:04:12 17 THE WITNESS: She, she was performing as an
12:04:16 18 ESGR representative. I saw her doing everything that
12:04:22 19 was required to make sure that the program was being
12:04:24 20 carried out. She was maintaining all the functions for
12:04:28 21 the Guard members and any employer that may have
12:04:33 22 conflicts. She was functioning as an ESGR rep, and she
12:04:38 23 was hired to.

12:04:39 24 BY MR. JUPITER:

12:04:39 25 Q. And -- that she was hired to by, as ESGR rep?

12:04:44 1 A. Yes, by the contractor.

12:04:45 2 Q. And this was after she was hired in her military
12:04:49 3 tech position?

12:04:49 4 A. That's correct, sir.

12:04:52 5 MR. JUPITER: Okay.

12:04:52 6 No further questions, Your Honor.

12:04:53 7 THE COURT: Captain Williams, thank you for
12:04:55 8 your testimony.

12:04:55 9 You may step down.

12:04:57 10 MR. POTTER: Can I?

12:05:00 11 THE COURT: Can you what?

12:05:01 12 MR. POTTER: Can I inquire?

12:05:02 13 THE COURT: Hold on, Captain Williams.

12:05:04 14 I don't think he went beyond the scope.

12:05:10 15 MR. POTTER: Thank you, Judge.

12:05:11 16 THE COURT: All right. Thank you, Captain
12:05:12 17 Williams.

12:05:12 18 (Witness withdrew from stand.)

12:05:13 19 THE COURT: Next witness?

12:05:31 20 MR. JUPITER: I call Zera Louis, Your Honor.

12:06:00 21 THE CLERK: Please stand and raise your right
12:06:01 22 hand to take the oath.

12:06:02 23 (Witness sworn.)

12:06:07 24 THE WITNESS: Yes.

12:06:09 25

12:06:09 1 THEREUPON, ZERA LOUIS having been duly sworn,
12:06:12 2 was examined and testified as follows:

12:06:12 3 DIRECT EXAMINATION

12:06:12 4 BY MR. JUPITER:

12:06:16 5 Q. Good afternoon. Would you please tell us your
12:06:17 6 name?

12:06:18 7 A. Zera Louis.

12:06:19 8 Q. Ms. Louis, where are you employed?

12:06:22 9 THE COURT: Before you go on, Ms. Louis, would
12:06:25 10 you spell your name, please.

12:06:25 11 THE WITNESS: Z-e-r-a, L-o-u-i-s.

12:06:32 12 THE COURT: Go ahead.

12:06:35 13 THE WITNESS: Virgin Islands National Guard.

12:06:36 14 BY MR. JUPITER:

12:06:36 15 Q. How long have you been employed with the Virgin
12:06:38 16 Islands National Guard?

12:06:38 17 A. Eight years.

12:06:39 18 Q. And what is your current assignment?

12:06:41 19 A. HR specialist.

12:06:43 20 Q. Before -- you say you've been employed. So you've
12:06:47 21 been employed since 2007?

12:06:49 22 A. Yes.

12:06:49 23 Q. All right. In 2007, what capacity did you work in
12:06:54 24 the National Guard?

12:06:54 25 A. I was an administrative assistant to the chief of

12:06:57 1 staff.

12:06:57 2 Q. And who was that chief of staff at that time?

12:07:00 3 A. Elton Lewis.

12:07:02 4 Q. And with regard to -- did you have the duties --
12:07:08 5 first of all, what duties did you have with respect to,
12:07:14 6 with respect -- what duties did you have with respect to
12:07:19 7 staff meetings?

12:07:21 8 A. Can you repeat the question?

12:07:23 9 Q. Okay. Did -- Elton Lewis was the chief of staff,
12:07:27 10 correct?

12:07:28 11 A. Yes, he was.

12:07:29 12 Q. Okay. Did he have staff meetings, weekly staff
12:07:31 13 meetings?

12:07:32 14 MR. POTTER: Objection, Your Honor.

12:07:33 15 THE WITNESS: Yes, he did.

12:07:34 16 THE COURT: Overruled.

12:07:35 17 BY MR. JUPITER:

12:07:35 18 Q. Okay. And with respect to staff meetings, when
12:07:39 19 were they held?

12:07:40 20 A. Every Tuesday.

12:07:41 21 Q. Did you have any particular duties with respect to
12:07:46 22 preparation for those staff meetings?

12:07:48 23 A. Compile slides.

12:07:50 24 Q. Okay. Do you know Sherrymae Morales?

12:07:52 25 A. Yes, I do.

12:07:53 1 Q. Okay. Do you see her in court today?

12:07:55 2 A. Yes, I do.

12:07:56 3 Q. Could you point her out?

12:07:59 4 A. Right there (indicating).

12:08:00 5 Q. In 2007, did you know what -- when you first got

12:08:05 6 there -- November 2007, do you know what Ms. Morales was

12:08:11 7 hired to do?

12:08:14 8 A. I can't particularly remember.

12:08:16 9 Q. Okay. Are you familiar with a position that's

12:08:22 10 called the ESGR contractor?

12:08:25 11 A. Yes, I am.

12:08:30 12 Q. And in 2007, do you recall anyone being hired to

12:08:33 13 that position while General Lewis was there?

12:08:36 14 A. I can't remember dates.

12:08:39 15 Q. Okay.

12:08:40 16 A. I can't remember.

12:08:41 17 Q. Do you -- with regard to Mrs. Morales, what

12:08:43 18 positions have you known her to hold with respect to the

12:08:47 19 National Guard?

12:08:48 20 A. ESGR.

12:08:49 21 Q. Okay. Now, any other position do you know her to

12:08:54 22 hold?

12:08:54 23 A. Yes. I can't remember the title, but yeah, she

12:08:57 24 held another position.

12:08:58 25 Q. All right. And who was her supervisor for that

12:09:01 1 other position?

12:09:02 2 A. I'm not quite sure.

12:09:07 3 Q. Okay. Did you ever have any interaction with her
12:09:14 4 prior to, prior to -- you mentioned that you prepare
12:09:24 5 panel slides, correct?

12:09:26 6 A. Slides, briefing slides.

12:09:28 7 Q. Who would you do that for?

12:09:30 8 Who would you do that for?

12:09:31 9 A. For Elton Lewis.

12:09:32 10 Q. Okay. And when you would prepare them, who would
12:09:37 11 you contact to prepare those slides?

12:09:41 12 MR. POTTER: Objection. Leading, Your Honor.

12:09:42 13 THE COURT: Overruled.

12:09:43 14 THE WITNESS: The directorates.

12:09:52 15 BY MR. JUPITER:

12:09:52 16 Q. Okay. And anyone -- was Mrs. Morales someone you
12:09:56 17 would contact?

12:09:58 18 MR. POTTER: Object- --

12:10:00 19 THE WITNESS: Yes.

12:10:01 20 BY MR. JUPITER:

12:10:01 21 Q. Now, in terms of briefings that occurred in 2010,
12:10:09 22 do you remember, do you remember meetings during that
12:10:11 23 time?

12:10:13 24 A. Yes. They're held every Tuesday.

12:10:16 25 Q. Okay. Would you receive any of these files from

12:10:24 1 Mrs. Morales?

12:10:26 2 MR. POTTER: Objection. Leading.

12:10:27 3 THE COURT: Sustained.

12:10:27 4 Stop leading your witness.

12:10:28 5 BY MR. JUPITER:

12:10:29 6 Q. With regard to Mrs. Morales's position, you

12:10:34 7 mentioned she had an ESGR position?

12:10:36 8 A. Yes.

12:10:36 9 Q. Okay. And at another point, did she get any other
12:10:39 10 positions?

12:10:41 11 A. I can't remember.

12:11:08 12 Q. Do you remember -- do you remember if

12:11:19 13 Mrs. Morales -- this is not the first time we've met,

12:11:32 14 Mrs. Louis?

12:11:34 15 A. No, this is not the first time that we've met.

12:11:36 16 Q. And we've discussed Mrs. Morales before, correct?

12:11:40 17 MR. POTTER: Objection, Your Honor. Leading.

12:11:41 18 THE COURT: Sustained.

12:11:42 19 THE WITNESS: Yes, we have.

12:11:49 20 THE COURT: Mrs. Louis, wait for the next
12:11:52 21 question.

12:11:56 22 BY MR. JUPITER:

12:11:56 23 Q. And we've discussed with myself and Ms. Delosa,
12:12:02 24 would come and talk to you about this case?

12:12:05 25 A. Yes, we have.

12:12:07 1 Q. Okay. And have we talked about two positions
12:12:10 2 that --

12:12:11 3 MR. POTTER: Objection, Your Honor. Leading.

12:12:13 4 THE COURT: Sustained.

12:12:18 5 Wait for the next question.

12:12:26 6 BY MR. JUPITER:

12:12:26 7 Q. What have we discussed with regard to
12:12:29 8 Mrs. Morales's position or positions?

12:12:30 9 MR. POTTER: Objection, Your Honor. Leading.

12:12:33 10 THE COURT: Sustained. And also there's
12:12:39 11 some -- it sounds to me like you're getting into hearsay
12:12:41 12 as well.

12:12:45 13 MR. JUPITER: Using it for impeachment, Your
12:12:48 14 Honor.

12:12:48 15 THE COURT: All right. So there's another --
12:12:50 16 all right. Come to sidebar.

12:13:03 17 (Sidebar discussion held as follows:)

12:13:03 18 THE COURT: I'm not sure what it is you're
12:13:05 19 trying to impeach.

12:13:07 20 MR. JUPITER: Your Honor, I'm quite honest with
12:13:09 21 you, I'm very surprised --

12:13:10 22 THE COURT: You want to treat her as a hostile
12:13:12 23 witness; is that what you're trying to say?

12:13:14 24 MR. JUPITER: I don't think I can -- have to
12:13:16 25 treat her as a hostile, which is to impeach her --

12:13:19 1 THE COURT: What is it that she said that is
12:13:21 2 contrary to something else she said?

12:13:23 3 Tell me specifically what it is she said.

12:13:26 4 MR. JUPITER: She said she doesn't remember if
12:13:27 5 she -- she doesn't remember if she had -- what her other
12:13:33 6 position was. She doesn't remember whether or not she
12:13:35 7 received information from her, on briefing slides from
12:13:39 8 her.

12:13:40 9 THE COURT: But why isn't that a current
12:13:43 10 recollection problem, as opposed to a statement contrary
12:13:46 11 to one previously uttered?

12:13:48 12 She's saying she doesn't remember. That's not
12:13:51 13 uncommon for witnesses to say, "I don't remember." That
12:13:53 14 doesn't mean that they're trying to go against what
12:13:59 15 you -- they just don't remember.

12:14:00 16 You want to impeach her, but she just currently
12:14:04 17 cannot recollect something, is what I heard, which is
12:14:07 18 what I thought you just said. She said she can't
12:14:10 19 remember.

12:14:11 20 If she had told you, "I know the light was red,"
12:14:16 21 and today she is saying, "I don't know the light was
12:14:19 22 red," then that's certainly something to impeach. If
12:14:23 23 she's saying, "I can't recall the color," that's a
12:14:27 24 different story, though.

12:14:29 25 I don't know if perhaps there's something you were

12:14:32 1 intending to refresh her recollection with. I don't
12:14:35 2 know if she made a written statement. I don't know if
12:14:37 3 there's something that would refresh her recollection,
12:14:40 4 and you can go through that protocol.

12:14:43 5 But what you're doing is just putting the words in
12:14:46 6 her mouth. All she's going to say is yes or no.

12:14:50 7 But significantly, it's going to seem like you're
12:14:52 8 the one who's testifying: Didn't I talk to you about
12:14:55 9 blah, blah, blah? Didn't my assistant talk to you about
12:15:01 10 X, Y, Z?

12:15:02 11 You know, if you want to refresh recollection,
12:15:04 12 there's a protocol to go through. All right.

12:15:07 13 MR. JUPITER: Yes, Your Honor.

12:15:08 14 THE COURT: Thank you.

12:15:09 15 (End sidebar discussion, open court as follows:)

12:15:26 16 BY MR. JUPITER:

12:15:27 17 Q. Ms. Louis, you're saying you can't recall back
12:15:32 18 in -- is that your recollection is not fresh with regard
12:15:35 19 to the events that occurred in 2010 and 2011?

12:15:40 20 A. That's correct.

12:15:57 21 Q. Do you have any recollection of your interaction
12:16:00 22 with Mrs. Morales during that time period?

12:16:05 23 A. Yes. We spoke.

12:16:07 24 Q. Okay. And were you -- you remember her -- do you
12:16:14 25 remember -- you indicated you remember her having the

12:16:16 1 ESGR position?

12:16:18 2 MR. POTTER: Objection. Leading, Your Honor.

12:16:19 3 THE COURT: Sustained.

12:16:20 4 BY MR. JUPITER:

12:16:20 5 Q. And to when did she have that ESGR position?

12:16:25 6 A. I can't remember the date.

12:16:27 7 Q. Okay. And with respect to, with respect to her,
12:16:35 8 after her hire, do you remember her having the ESGR
12:16:45 9 position?

12:16:48 10 MR. POTTER: Objection again. Leading, Your
12:16:51 11 Honor.

12:16:51 12 THE COURT: Sustained.

12:16:53 13 BY MR. JUPITER:

12:16:54 14 Q. Can you tell me relatively to -- relatively to any
12:16:58 15 event that you know, any change in events that you know
12:17:04 16 of when she continued to -- when she left this ESGR
12:17:07 17 position?

12:17:07 18 A. I can't remember the date.

12:17:10 19 MR. JUPITER: Okay, Ms. Louis.

12:17:12 20 No further questions, Your Honor.

12:17:13 21 THE COURT: Attorney Potter?

12:17:14 22 MR. POTTER: No questions, Your Honor.

12:17:15 23 THE COURT: Ms. Louis, thank you for your
12:17:17 24 testimony.

12:17:18 25 You may step down.

12:17:18 1 (Witness withdrew from stand.)

12:17:20 2 THE COURT: Next witness.

12:17:55 3 MR. JUPITER: Your Honor, we call Sherry [sic]
12:18:06 4 Barnes.

12:18:36 5 THE CLERK: Please raise your right hand to
12:18:38 6 take the oath.

12:18:38 7 (Witness sworn.)

12:18:43 8 THE WITNESS: I do.

12:18:44 9 THEREUPON, MONA L. BARNES, having been duly
12:18:48 10 sworn, was examined and testified as follows:

12:18:48 11 DIRECT EXAMINATION

12:18:49 12 BY MR. JUPITER:

12:18:52 13 Q. Good afternoon.

12:18:52 14 A. Good afternoon, sir.

12:18:53 15 Q. Could you tell us your name?

12:18:55 16 A. My name is Mona L. Barnes.

12:18:58 17 Q. Mona Barnes.

12:18:59 18 And Ms. Barnes, where are you currently employed?

12:19:04 19 A. Presently, I am the director and the Homeland
12:19:09 20 Security adviser for the Virgin Islands Territorial
12:19:13 21 Emergency Management Agency, better known as VITEEMA.

12:19:15 22 Q. You've been an employee of the Virgin Islands
12:19:18 23 National Guard?

12:19:19 24 A. I have, sir.

12:19:20 25 Q. When were you employed by the Virgin Islands

12:19:22 1 National Guard?

12:19:22 2 A. I started with the National Guard in 1987, and I
12:19:31 3 retired in February 28th of 2015.

12:19:35 4 Q. So just this year?

12:19:36 5 A. Yes.

12:19:37 6 Q. Okay. Have you had occasion -- well, let me ask
12:19:41 7 you this: During 2007, where were you stationed?

12:19:45 8 A. 2007, I was the first sergeant for the weapons of
12:19:49 9 mass destruction, civil support team, in the Virgin
12:19:53 10 Islands National Guard, active duty.

12:19:56 11 Q. Where did you, where did you work?

12:19:58 12 A. I worked out of Spratt Hall.

12:20:01 13 Q. And did there come a time when you worked -- when
12:20:06 14 you came to work at the Virgin Islands National Guard
12:20:08 15 headquarters?

12:20:09 16 A. Yes, sir.

12:20:10 17 Q. And when was that?

12:20:11 18 A. 2010, I was appointed as the state command sergeant
12:20:17 19 major, and my office moved to headquarters at High
12:20:21 20 Point.

12:20:21 21 Q. Do you know what month was that in 2010?

12:20:25 22 A. I moved in May.

12:20:26 23 Q. May of 2010?

12:20:29 24 A. Yes.

12:20:29 25 Q. Do you know Sherry Morales?

12:20:31 1 A. I do.

12:20:31 2 Q. How do you know Sherry Morales?

12:20:33 3 A. She's my cousin. She's also been my colleague in
12:20:37 4 the Virgin Islands National Guard.

12:20:40 5 Q. And in regards to May of 2010, do you recall any
12:20:45 6 time after that, her being hired at the Virgin Islands
12:20:49 7 National Guard?

12:20:50 8 A. I do, sir.

12:20:50 9 Q. All right. How was her -- what was her position at
12:20:55 10 the end of 2010 with the Virgin Islands National Guard?

12:20:59 11 A. I don't quite remember the date, but I know she was
12:21:02 12 the ESGR rep for the Virgin Islands National Guard. And
12:21:06 13 then subsequently she became our J5.

12:21:10 14 Q. Okay. When she became the J5, with respect to her
12:21:13 15 duties with the ESGR, did she continue to do that?

12:21:17 16 A. Yes, sir.

12:21:20 17 Q. And what did you observe her doing in that role?

12:21:23 18 A. Well, as the state command sergeant major and as
12:21:25 19 the senior adviser, we had weekly meetings. And so
12:21:29 20 different departments had to brief on their departments.
12:21:33 21 And so Mrs. Morales from the time would brief J5 and
12:21:37 22 ESGR.

12:21:37 23 Q. She would brief both positions?

12:21:39 24 A. Yes.

12:21:39 25 Q. At the same meeting?

12:21:40 1 A. Yes, sir.

12:21:41 2 Q. And these were meetings that were conducted by who?

12:21:43 3 A. The chief of staff.

12:21:44 4 Q. And who was that?

12:21:45 5 A. When I first came to the Guard it was -- he was
12:21:50 6 Colonel, now General Lewis, retired. And then it was
12:21:53 7 also Colonel Ruan.

12:22:01 8 Q. Did there come a time where you came to assist
12:22:05 9 Mrs. Morales with regard to anything pertaining to ESGR?

12:22:10 10 MR. POTTER: Objection. Leading, Your Honor.

12:22:12 11 THE COURT: Sustained.

12:22:22 12 Rephrase.

12:22:29 13 BY MR. JUPITER:

12:22:29 14 Q. What interaction did you have with Mrs. Morales
12:22:32 15 pertaining to the ESGR position?

12:22:34 16 MR. POTTER: Objection. Leading, Your Honor.

12:22:36 17 THE COURT: Overruled.

12:22:37 18 THE WITNESS: They had had what we call
12:22:40 19 functions for ESGR. I remember there was one that was
12:22:43 20 held at The Palms. And as the state command
12:22:49 21 sergeant-major, as I recall, Major Morales was heading
12:22:53 22 the function, and I attended as the state command
12:22:57 23 sergeant-major.

12:22:57 24 BY MR. JUPITER:

12:22:57 25 Q. With regard -- did you assist her with anything

12:22:59 1 else?

12:22:59 2 A. Nothing more than conversation, knowing that it was
12:23:02 3 going to have a function, and based on my position I was
12:23:05 4 requested to be there and I attended.

12:23:08 5 Q. Is there anything else you learned about the ESGR
12:23:11 6 position that she was holding?

12:23:13 7 A. I'm sorry?

12:23:14 8 Q. Was there anything else that you learned about the
12:23:16 9 ESGR position that she was holding? That she was
12:23:19 10 holding?

12:23:20 11 MR. POTTER: Objection.

12:23:20 12 THE COURT: Sustained.

12:23:21 13 Are you asking what is it she learned from anyone
12:23:29 14 in the universe, including the defendant?

12:23:31 15 MR. JUPITER: Yes, Your Honor.

12:23:32 16 THE COURT: Okay. Sustained.

12:23:35 17 BY MR. JUPITER:

12:23:36 18 Q. What -- do you know anyone named Deirdre Clark?

12:23:49 19 A. I do.

12:23:49 20 Q. Did you do anything with respect to Deirdre Clark
12:23:53 21 regarding this ESGR position?

12:23:54 22 A. Yes.

12:23:55 23 Q. What was that?

12:23:56 24 A. Deirdre Clark is my adopted daughter, and she
12:24:01 25 relocated from Chicago and was seeking employment. And

12:24:03 1 I learned that the ESGR position that Major Morales was
12:24:08 2 holding was going to be advertised, and so I got her
12:24:11 3 resume. I spoke to Major Morales about the position and
12:24:16 4 I got her resume and I gave it to Major Morales.

12:24:19 5 Q. Okay. And was -- all right.

12:24:30 6 MR. JUPITER: No further questions, Your Honor.

12:24:32 7 THE COURT: Attorney Potter?

12:24:33 8 MR. POTTER: No questions, Your Honor.

12:24:35 9 THE COURT: Ms. Barnes, thank you for your
12:24:37 10 testimony.

12:24:40 11 You may step down.

12:24:41 12 THE WITNESS: You're welcome.

12:24:45 13 (Witness withdrew from stand.)

12:24:45 14 THE COURT: Next witness?

12:25:07 15 MR. JUPITER: Mr. Aelleyne.

12:26:48 16 (Witness sworn.)

12:26:49 17 THE WITNESS: I do. Yes.

12:26:54 18 THEREUPON, KENNETH AELLEYNE, having been duly
12:26:56 19 sworn, was examined and testified as follows:

12:26:56 20 DIRECT EXAMINATION

12:26:57 21 BY MR. JUPITER:

12:26:59 22 Q. Please tell us your name, and spell your first and
12:27:02 23 last name.

12:27:02 24 A. Yes. My name is Lieutenant-Colonel K-e-n-n-e-t-h,
12:27:07 25 Aelleyne, A-e-l-l-e-y-n-e.

12:27:10 1 Q. And Lieutenant-Colonel Aelleyne, where are you
12:27:13 2 employed?

12:27:13 3 A. Employed at the Virgin Islands National Guard.

12:27:15 4 Q. How long have you been -- are you active duty?

12:27:18 5 A. I'm AGR active duty with the Virgin Islands
12:27:21 6 National Guard.

12:27:22 7 Q. What do you do?

12:27:22 8 A. I'm a strategic planner J5.

12:27:22 9 Q. What does a J5 strategic planner do?

12:27:27 10 A. I'm responsible for all the plans for the adjutant
12:27:32 11 general; also development, dealing with the community,
12:27:38 12 interagency development plans, policies that would
12:27:43 13 maintain the organization and support the territory.

12:27:45 14 Q. How long have you been associated with the National
12:27:48 15 Guard, Virgin Islands National Guard?

12:27:49 16 A. Approximately ten years now.

12:27:51 17 Q. So back to 2005?

12:27:55 18 A. I returned home in 2005, correct.

12:27:57 19 Q. And when you returned in 2005, what were you doing
12:28:00 20 at that time?

12:28:01 21 A. I was the deputy commander of the 23rd, weapons of
12:28:07 22 mass destruction civil support team.

12:28:11 23 Q. And do you know Sherrymae Morales?

12:28:14 24 A. Yes, I do.

12:28:14 25 Q. How do you know Mrs. Morales?

12:28:16 1 A. Mrs. Morales was a colleague of mine at the
12:28:20 2 Virgin Islands National Guard, and we worked on a lot of
12:28:23 3 projects together for the adjutant general and for
12:28:26 4 General Lewis as well.

12:28:27 5 Q. So you worked on a lot of projects for General
12:28:31 6 Lewis.

12:28:31 7 Let me ask you this: Was he -- was General
12:28:35 8 Lewis -- in 2010 through 2011, what relationship did he
12:28:40 9 have with you?

12:28:41 10 A. 2010 to 2011? He would have been my immediate
12:28:45 11 supervisor.

12:28:45 12 Q. Okay. And in -- after -- in 2009 -- let me ask you
12:28:56 13 this: Are you married?

12:28:57 14 A. I am. Happily married, yes.

12:28:59 15 Q. And what's your wife's name?

12:29:01 16 A. My wife's name is Janice.

12:29:03 17 Q. Janice Aelleyne?

12:29:04 18 A. Janice Aelleyne, yes, sir.

12:29:06 19 Q. Now, in 2009, were you all living in the same area?

12:29:12 20 A. No. I believe, if I remember correctly -- it's
12:29:16 21 been a back and forth -- Janice was in the States in
12:29:19 22 2009 and I was here in 2009.

12:29:21 23 Q. And what is, what does she do?

12:29:24 24 A. My wife is a schoolteacher.

12:29:29 25 Q. Were you -- what was your intent in terms of

12:29:34 1 whether you were going to stay or leave St. Croix?

12:29:39 2 A. Yes, it was my -- well, it was my intent to leave
12:29:42 3 the Virgin Islands National Guard and return to the
12:29:45 4 mainland, before 2009. And then also in 2009, because
12:29:51 5 we had another meeting for where I was discussing to
12:29:55 6 receive a transfer, a release from the Virgin Islands
12:29:58 7 National Guard to return back to the mainland to be with
12:30:00 8 my family.

12:30:01 9 Q. What happened? Did you ever leave?

12:30:04 10 A. Never left, no, sir.

12:30:06 11 Q. And why didn't you leave?

12:30:08 12 A. The leadership felt that based on the team that
12:30:15 13 they had assembled, that we were, we were producing and
12:30:21 14 we were gaining some -- we were gaining a tremendous
12:30:26 15 amount of success in the projects that we were
12:30:28 16 undertaking, trying to move the organization forward
12:30:32 17 with a low amount of change that was coming down through
12:30:36 18 National Guard and the Army side.

12:30:37 19 And pretty much they told me that they -- it was a
12:30:41 20 critical time for --

12:30:43 21 MR. POTTER: Objection, Your Honor.

12:30:44 22 THE COURT: All right. Wait for the next
12:30:45 23 question.

12:30:45 24 THE WITNESS: It was a critical time for --

12:30:48 25 THE COURT: Stop. Wait for the next question.

12:30:50 1 Next question.

12:30:50 2 BY MR. JUPITER:

12:30:51 3 Q. As a result of those discussions, what did you do?

12:30:56 4 A. As far as?

12:30:57 5 Q. Leaving.

12:30:59 6 A. I didn't receive a release, so I stayed.

12:31:02 7 Q. So did you make any attempts to, any other attempts
12:31:08 8 to live -- for you and your wife to live in the same
12:31:11 9 place?

12:31:11 10 A. Yes.

12:31:11 11 Q. Okay. What did you do?

12:31:12 12 A. I went back to the chain of command, and after I
12:31:15 13 completed a task that they asked me to complete, which
12:31:17 14 was certified and setting up the team, I asked for a
12:31:21 15 release at that time.

12:31:22 16 Q. Was -- did you have conversations about releasing
12:31:27 17 then?

12:31:27 18 A. Yes.

12:31:28 19 Q. Okay. As a result of those conversations, were you
12:31:30 20 able to get a release?

12:31:33 21 A. No, no one -- I was told I could be released, and I
12:31:36 22 was not released.

12:31:39 23 Q. Now with respect to -- did there come a time where
12:31:42 24 you made any attempts to have your wife, Ms. Aelleyne,
12:31:47 25 to come here?

12:31:48 1 MR. POTTER: Objection, Your Honor. Leading.

12:31:51 2 THE WITNESS: Yes.

12:31:52 3 THE COURT: Sustained.

12:31:52 4 BY MR. JUPITER:

12:31:52 5 Q. What did you do after that?

12:31:55 6 A. I went back to the leadership and I explained to
12:31:57 7 them, you know, the criticalness of what was impacting
12:32:00 8 my family as far as separation from my children, as well
12:32:04 9 as the financial difficulty with trying to maintain two
12:32:07 10 households. And then I was given a letter saying that I
12:32:10 11 would be released.

12:32:11 12 Q. Okay. Did there come -- what happened after that?

12:32:14 13 A. They reneged on that. I was not given the release.
12:32:19 14 I was given another project and asked to complete the
12:32:25 15 project. And we discussed it at a later time.

12:32:27 16 Q. Did you have any interaction -- well, let me just
12:32:29 17 ask you, what happened after that in terms of your
12:32:34 18 efforts to reunite with your wife?

12:32:36 19 A. The leadership then came to me and said, you
12:32:38 20 know --

12:32:39 21 MR. POTTER: Objection, Your Honor.

12:32:40 22 THE COURT: Stop.

12:32:40 23 Next question.

12:32:42 24 MR. JUPITER: Not offered for the truth, Your
12:32:44 25 Honor.

12:32:46 1 THE COURT: You can rephrase or go around it.

12:32:53 2 BY MR. JUPITER:

12:32:54 3 Q. As a result of your -- as a result of those
12:32:58 4 denials, what did you do -- without saying what was told
12:33:03 5 to you, what did you do with respect to making plans to
12:33:09 6 reunite with your wife?

12:33:11 7 A. I discussed with my wife an offer that was made to
12:33:15 8 me, for her to join me here.

12:33:18 9 Q. Okay. At that particular time, what was she doing?

12:33:20 10 A. She was teaching in Maryland.

12:33:22 11 Q. Okay. Was she doing anything else with respect to
12:33:25 12 her career?

12:33:27 13 A. She was also working at a program in Maryland,
12:33:33 14 Impact Silver Springs, at that time. And then I believe
12:33:34 15 in January of 2009 she started, she was a volunteer also
12:33:37 16 with the ESGR program here for the Virgin Islands
12:33:40 17 National Guard.

12:33:41 18 Q. Okay. Now, did, and in this -- so any efforts, did
12:33:48 19 you have any interaction with Mrs. Morales or -- well,
12:33:52 20 first of all, did you have any interaction with Colonel
12:33:55 21 Lewis regarding your wife coming here?

12:33:57 22 A. I'm sorry?

12:33:58 23 Q. Did you have any interaction with Colonel Lewis
12:34:00 24 regarding your wife coming here?

12:34:02 25 A. If I had any interaction?

12:34:03 1 Q. Yes.

12:34:04 2 A. Yes.

12:34:04 3 Q. What was that?

12:34:05 4 A. He informed me that --

12:34:07 5 MR. POTTER: Objection, Your Honor.

12:34:09 6 MR. JUPITER: Not offered for the truth, Your
12:34:11 7 Honor.

12:34:11 8 THE COURT: All right.

12:34:14 9 What happened as a result of that interaction?

12:34:16 10 What did you do?

12:34:18 11 THE WITNESS: I informed my wife of the
12:34:20 12 discussion I had with the general.

12:34:26 13 THE COURT: Okay. Next question. Go ahead.

12:34:28 14 BY MR. JUPITER:

12:34:28 15 Q. And as a result of those discussions, did you at
12:34:31 16 any point come into contact with Mrs. Morales?

12:34:34 17 A. Yes.

12:34:34 18 Q. Okay. And what was that about?

12:34:37 19 A. Mrs. Morales felt that -- we discussed that she
12:34:41 20 felt that --

12:34:42 21 MR. POTTER: Objection, Your Honor.

12:34:43 22 THE COURT: Stop. No. Wait for the next
12:34:46 23 question.

12:34:47 24 BY MR. JUPITER:

12:34:47 25 Q. At that time, what position or positions did

12:34:52 1 Mrs. Morales hold?

12:34:54 2 A. Mrs. Morales was the ESGR coordinator, I believe,
12:34:57 3 at that time.

12:34:58 4 THE COURT: You're asking what he observed
12:34:59 5 or -- not that he learned from.

12:35:04 6 BY MR. JUPITER:

12:35:04 7 Q. Well, as a result of those discussions, what did
12:35:06 8 you learn in terms of the --

12:35:09 9 A. My wife will be taking over the ESGR position from
12:35:12 10 Mrs. Morales.

12:35:16 11 Q. And at that time, what other positions did
12:35:21 12 Mrs. Morales have?

12:35:22 13 MR. POTTER: Objection, Your Honor.

12:35:24 14 THE COURT: Overruled.

12:35:26 15 THE WITNESS: Mrs. Morales was the J5 of the
12:35:29 16 Virgin Islands National Guard at the time.

12:35:34 17 MR. JUPITER: No further questions, Your Honor.

12:35:35 18 THE COURT: Attorney Potter?

12:35:37 19 MR. POTTER: Court's indulgence, Your Honor?

12:35:42 20 THE COURT: Yes.

12:35:47 21 (Pause)

12:35:47 22 MR. POTTER: No questions, Judge.

12:35:48 23 THE COURT: Okay.

12:35:50 24 Colonel Aelleyne, thank you for your testimony.

12:35:53 25 You may step down.

12:35:53 1 THE WITNESS: Thank you, sir.

12:35:55 2 (Witness withdrew from stand.)

12:35:55 3 THE COURT: Ladies and gentlemen, it is time
12:35:56 4 for lunch. So we will break for 50 minutes today.
12:36:11 5 Enjoy your lunch.

12:36:12 6 (Jury out.)

12:36:58 7 THE COURT: Attorney Jupiter, how many more
12:36:59 8 witnesses do you have?

12:37:03 9 MR. JUPITER: I believe three, Your Honor.

12:37:04 10 THE COURT: You expect that they will be long
12:37:06 11 witnesses or short?

12:37:07 12 MR. JUPITER: Only one, Your Honor, will be
12:37:09 13 long.

12:37:09 14 THE COURT: All right.

12:37:11 15 We will try to get you, sometime during the
12:37:15 16 witnesses, the jury instructions so we can have our
12:37:20 17 charging conference this afternoon.

12:37:21 18 All right, Counsel, 5-0 minutes. Enjoy your lunch.

12:38:31 19 (Court in recess 12:38 p.m.)

13:32:39 20 (After recess, 1:43 p.m., jury present).

13:43:08 21 THE COURT: Good afternoon, ladies and
13:43:09 22 gentlemen.

13:43:09 23 How was lunch today?

13:43:11 24 (Jurors respond.)

13:43:12 25 THE COURT: Better than yesterday?

13:43:12 1 (Jurors indicating.)

13:43:15 2 THE COURT: I see two thumbs up. I think I --
13:43:19 3 all right.

13:43:19 4 (Laughter.)

13:43:21 5 THE COURT: All right. As you know, we're
13:43:22 6 still taking evidence from the defense.

13:43:25 7 Attorney Jupiter, are you ready to proceed?

13:43:27 8 MR. JUPITER: I am, Your Honor.

13:43:28 9 We call Sherrymae Morales.

13:43:49 10 THE CLERK: Please stand and raise your right
13:43:51 11 hand to take the oath.

13:43:53 12 (Witness sworn.)

13:43:54 13 THE WITNESS: I do.

13:43:58 14 THEREUPON, SHERRYMAE MORALES, having been duly
13:43:58 15 sworn, was examined and testified as follows:

13:43:58 16 DIRECT EXAMINATION

13:44:00 17 BY MR. JUPITER:

13:44:06 18 Q. Please tell us your name, and spell your first and
13:44:08 19 last name.

13:44:10 20 A. Sherrymae Morales; S-h-e-r-r-y-m-a-e,
13:44:17 21 M-o-r-a-l-e-s.

13:44:19 22 Q. And Ms. Morales, do you now reside in St. Croix?

13:44:24 23 A. No, I do not.

13:44:25 24 Q. Are you from St. Croix?

13:44:26 25 A. I am from St. Croix, yes.

13:44:28 1 Q. And did you, did you -- were you ever a member of
13:44:36 2 the Virgin Islands National Guard?

13:44:37 3 A. Yes, I was.

13:44:38 4 Q. From what years?

13:44:39 5 A. June 24th, 1983, through December 15th, 2003; and
13:44:47 6 then again in February 2010 through May of 2011.

13:44:57 7 Q. Do you have any children?

13:45:02 8 A. I have one daughter, Rosa Shari Morales.

13:45:09 9 Q. What education have you received, Mrs. Morales?

13:45:12 10 A. I have a master's in public administration and a
13:45:16 11 bachelor's in business administration.

13:45:17 12 Q. And where did you get your bachelor's?

13:45:20 13 A. I got my bachelor's degree from California Coast
13:45:24 14 University.

13:45:24 15 Q. And your master's?

13:45:25 16 A. From Walden University.

13:45:26 17 Q. Now, you served in the Guard for a number -- in the
13:45:30 18 National Guard for a number of years. You said between
13:45:33 19 '83 and 2003?

13:45:35 20 A. That is correct.

13:45:35 21 Q. And what are the various positions -- what are some
13:45:39 22 of the positions you've held?

13:45:40 23 A. When I initially joined the Guard, I joined as an
13:45:45 24 enlisted member. I got commissioned through Fort
13:45:49 25 Benning, Georgia, in 1984. Upon commissioning, I

13:45:55 1 accepted a position in the National Guard full-time as a
13:46:00 2 systems analyst.

13:46:02 3 After that, I became a logistics management
13:46:08 4 officer, contacting officer, human resources officer,
13:46:15 5 and I believe that's it -- recruiting and retention
13:46:18 6 manager.

13:46:19 7 Q. Okay. Now, with regard to -- what area would you
13:46:25 8 say you received the most training in, in the Guard,
13:46:29 9 your first years in the Guard?

13:46:30 10 A. I was actually a military police officer when I
13:46:36 11 came into the National Guard. The most training I had
13:46:39 12 in the Guard would be logistics management.

13:46:41 13 Q. Okay. And what did you do as logistics management?

13:46:45 14 A. Basically, I was -- I oversaw equipment coming into
13:46:50 15 the territory, distributing -- ensured that they were
13:46:57 16 distributed to the various units, and was basically
13:47:01 17 responsible at the headquarters level for
13:47:05 18 accountability, property accountability.

13:47:08 19 Q. In 2003, when you left the Guard, what were your
13:47:12 20 plans -- what did you do at that time?

13:47:14 21 A. Basically, I retired on December 15th, 2003, and I
13:47:20 22 opened my own real estate business and management
13:47:24 23 consulting firm.

13:47:26 24 Q. Okay. Tell me a little bit about the management
13:47:27 25 consulting firm. What were you doing?

13:47:29 1 A. Management consulting. I basically did a lot of
13:47:33 2 leadership training for private entities and government
13:47:39 3 agencies.

13:47:40 4 Q. And how would you obtain that type of work?

13:47:45 5 A. Individuals contacted me, I guess from knowing my
13:47:50 6 background and skill sets.

13:47:52 7 Q. What was the form of the relationship with the
13:47:55 8 individuals who you worked for?

13:47:58 9 A. I was a contractor with -- I had a contract for
13:48:06 10 Triangle Construction. I've also had a contract for
13:48:09 11 Lutheran Social Services. I've had a contract with
13:48:15 12 Hovensa Refinery.

13:48:17 13 Q. Now, with regard to your working these -- your real
13:48:23 14 estate, your consulting, what kind of hours would you
13:48:25 15 work?

13:48:28 16 A. I basically worked pretty much 15-, 16-hour days my
13:48:36 17 entire career.

13:48:38 18 Q. That includes your military career?

13:48:41 19 A. That includes my military career.

13:48:43 20 Q. And when you were doing your real estate and your
13:48:46 21 consulting -- first of all, how long did you do the real
13:48:49 22 estate and the consulting?

13:48:51 23 A. I've been a real estate broker since -- for
13:48:56 24 ten years, since 2005. Prior to that time, I did real
13:49:00 25 estate for seven years as a sales agent with Hamilton

13:49:09 1 Real Estate.

13:49:09 2 Q. Now, I want to bring you to November of 2007. Did
13:49:16 3 you -- were you doing real estate at that time?

13:49:18 4 A. I was doing real estate at that time. I was
13:49:22 5 actually a board member for the St. Croix Board of
13:49:27 6 Realty -- Realtors. And November 2007, that's what I
13:49:33 7 was doing, between that and my management consulting.

13:49:38 8 Q. Did you get a call with regard to an ESGR position?

13:49:44 9 A. I got a call regarding an ESGR contract from
13:49:50 10 General Lewis, and Major Marise James.

13:49:55 11 Q. As a result -- and did you engage in any -- did you
13:50:00 12 engage with them in conversation -- first of all, what
13:50:03 13 was the call about?

13:50:07 14 A. The call -- they called me on November 7th and
13:50:11 15 basically told me that they -- they were about to lose
13:50:18 16 the ESGR contract.

13:50:19 17 MR. POTTER: Objection, Your Honor.

13:50:20 18 THE COURT: Overruled.

13:50:21 19 BY MR. JUPITER:

13:50:21 20 Q. As a result of that call, what did you do next as a
13:50:27 21 result of that call?

13:50:28 22 A. As a result of that call, I accepted the ESGR
13:50:33 23 contract.

13:50:34 24 Q. Did you have any discussion with anyone else
13:50:40 25 regarding the ESGR contract?

13:50:42 1 A. I spoke to Baron Hignite regarding the ESGR
13:50:47 2 contract, yes.

13:50:48 3 Q. Okay. Did you give him any indication during that
13:50:55 4 phone call of what you were doing with respect to your
13:50:58 5 other businesses?

13:50:59 6 MR. POTTER: Objection, Your Honor. Leading.

13:51:01 7 THE COURT: Sustained.

13:51:02 8 BY MR. JUPITER:

13:51:02 9 Q. What did you discuss with -- what did you tell
13:51:05 10 Baron Hignite?

13:51:07 11 A. When Mr. Hignite called me, I told him -- I asked
13:51:12 12 him if he was aware that I ran my own real estate firm
13:51:16 13 as well as my own management consulting company.

13:51:18 14 He said yes, he was.

13:51:20 15 MR. POTTER: Objection, Your Honor.

13:51:21 16 BY MR. JUPITER:

13:51:22 17 Q. As a result -- first of all, how long -- by the
13:51:26 18 time you spoke with Mr. Hignite, had you accepted the
13:51:31 19 position?

13:51:31 20 A. Not until after I spoke to him.

13:51:34 21 Q. Okay. Was there anything that you wanted to do
13:51:37 22 with respect to any conditions you wanted to set on
13:51:44 23 that, on that contract position?

13:51:45 24 MR. POTTER: Objection, Your Honor.

13:51:46 25 THE COURT: Sustained.

13:51:52 1 BY MR. JUPITER:

13:51:53 2 Q. What, what if, any terms did you discuss?

13:52:02 3 A. We discussed the fact that I owned my own real
13:52:08 4 estate company and my own management consulting firm,
13:52:12 5 and I would not accept the contract other than if I
13:52:16 6 could continue to do that.

13:52:19 7 Q. Now, did you continue to do that?

13:52:21 8 A. I continued to do that for the whole time that I
13:52:24 9 had that contract.

13:52:25 10 Q. And where was your -- where was your real estate
13:52:28 11 office?

13:52:28 12 A. It was at 45-M La Grande Princess.

13:52:33 13 Q. What did you -- so how long did you hold this ESGR
13:52:37 14 contract, initially?

13:52:38 15 A. I held the contract for ESGR initially for
13:52:44 16 three years.

13:52:44 17 Q. Okay. Now, during those three years, what did you
13:52:56 18 understand your duty -- first of all, what do you
13:52:58 19 understand your duties to be as the ESGR contractor?

13:53:00 20 A. When I spoke to Mr. Hignite, I understood my duties
13:53:05 21 to be building the volunteer committee for ESGR, finding
13:53:11 22 a state chair for ESGR, conducting USERRA briefings,
13:53:19 23 which is Uniform Services Employment and Reemployment
13:53:24 24 Rates Act, for service members returning from
13:53:26 25 deployments -- both predeployment and post-deployment,

13:53:35 1 as well as holding events for employers, getting
13:53:38 2 statements of support from employers. And I think that
13:53:44 3 was mostly it, in a nutshell.

13:53:47 4 Q. Were you advised as to what your hours were with
13:53:50 5 respect to getting this stuff done?

13:53:52 6 A. Never.

13:53:52 7 Q. Now, when you started to do the work that you talk
13:53:56 8 about, could you explain -- could you kind of give the
13:54:02 9 jury an understanding of what you were actually doing
13:54:04 10 during this time period before you were hired with the
13:54:09 11 Virgin Islands National Guard?

13:54:11 12 A. As an ESGR-- as the ESGR executive director, I had
13:54:16 13 to build a volunteer management committee. That
13:54:21 14 committee was, when I took the ESGR contract, was zero.
13:54:27 15 I built it to 60 members, that basically did not have an
13:54:32 16 issue signing up online, giving us their addresses,
13:54:39 17 phone numbers, contact information. So we went from
13:54:43 18 zero to 60 volunteers.

13:54:47 19 I also interacted with employers, both private and
13:54:51 20 government. I did a lot of training regarding the
13:54:59 21 USERRA law, and I did a pre- and post-deployment
13:55:07 22 briefings all on the weekends with service members.

13:55:11 23 Q. Why would you do them on weekends?

13:55:14 24 A. That's when the service members were available, as
13:55:17 25 well as any volunteers that would come into my office.

13:55:24 1 Q. Now when you say come into your office, what office
13:55:29 2 was this?

13:55:29 3 A. My real estate office.

13:55:31 4 Q. Why weren't you at the VING office?

13:55:33 5 A. The VING never invited me to have an office there
13:55:38 6 for the three years that I was -- that I held the ESGR
13:55:43 7 contract.

13:55:44 8 Q. Okay. And how far away were you from the VING
13:55:48 9 office?

13:55:49 10 A. My office -- my real estate office was literally
13:55:52 11 about a quarter mile west of the VING office, if that
13:55:57 12 much.

13:55:58 13 Q. When you talked about duties you had with respect
13:56:04 14 to soldiers and their employers, could you explain what
13:56:08 15 would happen with that?

13:56:09 16 How would you carry out those duties?

13:56:13 17 A. The duties I held with service members and their
13:56:18 18 employers, basically any service members that had an
13:56:21 19 issue with their employers, I would contact the
13:56:32 20 employer.

13:56:32 21 Sometimes they would call me back. Other times
13:56:34 22 they wouldn't. I would try to mediate or actually
13:56:43 23 mitigate whatever issues came up from those -- between
13:56:46 24 the service member and the employer, looking for a good
13:56:51 25 result.

13:56:54 1 Q. During this time period, did your -- first of all,
13:56:59 2 what was the payment amount that you were going to get
13:57:04 3 paid -- the amount of payment for your services on this
13:57:07 4 ESGR contract?

13:57:10 5 A. Initially, I believe it was \$52,000.

13:57:16 6 Q. Okay. Did that change any?

13:57:18 7 A. It changed when Mr. Hignite -- it changed when my
13:57:25 8 volunteer membership increased and the events that I was
13:57:29 9 holding on the weekends increased. I was offered an
13:57:34 10 increase to, I think we ended up at like \$60,000.

13:57:40 11 Q. Now, with respect to -- did you meet with -- did
13:57:45 12 you meet with anyone at your real estate office in terms
13:57:48 13 of your ESGR duties?

13:57:52 14 MR. POTTER: Objection, Your Honor. Leading.

13:57:53 15 THE WITNESS: I met with volunteers --

13:57:57 16 THE COURT: Overruled.

13:57:58 17 THE WITNESS: -- at my real estate office in
13:58:00 18 the evening, because most of these people are working
13:58:06 19 during the day and on weekends. At times when I hold
13:58:09 20 events I also met with them to help me, whether it was
13:58:13 21 to set up the venue, and that was basically it.

13:58:20 22 BY MR. JUPITER:

13:58:22 23 Q. What was your understanding with regard to how you
13:58:24 24 did timekeeping for your ESGR contract position?

13:58:30 25 A. The ESGR contract specified that there would be a

13:58:36 1 requirement to work evenings and weekends. And as a
13:58:42 2 result, basically we had to do 40 hours. That's what I
13:58:51 3 understood.

13:58:52 4 Q. Now what, if -- in terms of when you actually had
13:58:56 5 to put your -- put time into, what was the system
13:59:02 6 called?

13:59:02 7 A. The Deltek system.

13:59:04 8 Q. Okay. What kind of system is this?

13:59:07 9 A. The Deltek is a timekeeping system, and is very
13:59:12 10 popular with contractors --

13:59:14 11 Q. Okay.

13:59:14 12 A. -- because it is a very good system. Basically,
13:59:19 13 you can only enter time on the Deltek system during the
13:59:27 14 week from 8:00 to 5:00. It does not give you an option
13:59:33 15 at all, and it never has, to enter time during the
13:59:36 16 weekends or evenings.

13:59:38 17 Q. Okay. So with respect to what you understood you
13:59:41 18 had to do, your hours, what was the requirement with
13:59:48 19 respect to your hours?

13:59:49 20 A. Basically, I just entered eight hours from Monday
13:59:51 21 to Friday. There was no specific time delineated within
13:59:56 22 Deltek. There never has been. Basically, I just had
14:00:01 23 to -- and the times that I did my yellow ribbon
14:00:05 24 integration briefings, all that had to be entered during
14:00:13 25 the week.

14:00:14 1 Q. Okay. Now, did there come a time when you, when
14:00:20 2 you were hired by the National Guard in 2010?

14:00:24 3 A. Yes. Sorry.

14:00:30 4 Q. All right. How did that come about?
14:00:33 5 How did you learn about that position?

14:00:34 6 A. General Lewis contacted me. And Caroline Adams, I
14:00:40 7 think, the person that held the position -- I know the
14:00:45 8 person that held the position was being deployed to
14:00:50 9 Guantanamo Bay. They needed a replacement for the time
14:00:52 10 that she was going to be gone, and asked if I was
14:00:55 11 willing to come in and do the strategic plans and policy
14:00:59 12 position.

14:00:59 13 Q. Were you willing to do that?

14:01:01 14 A. Yes, I was.

14:01:02 15 Q. Why did you want to do that?

14:01:04 16 A. Initially, I looked at it as an extension to my
14:01:15 17 skill sets.

14:01:18 18 Q. Okay.

14:01:21 19 A. Basically, as a contractor it would look good as my
14:01:25 20 doing chain management, restructuring, strategic
14:01:30 21 planning, and Lean Six Sigma.

14:01:33 22 Q. What is Lean Six Sigma?

14:01:37 23 A. Lean Six Sigma deals with processes where you go
14:01:40 24 into an organization, basically conducting assessments
14:01:44 25 and looking for gap areas, as well as areas where you

14:01:48 1 can improve efficiencies.

14:01:52 2 Q. Now, did you take the military tech position?

14:01:58 3 A. Yes, I did.

14:01:59 4 Q. What, if any, conversation -- well, let me ask you
14:02:05 5 this: Did you notify Baron Hignite about your intent to
14:02:12 6 take that position?

14:02:13 7 A. Yes, I did. As soon as I accepted the position I
14:02:16 8 contacted Mr. Hignite and told him that I was going back
14:02:20 9 in the Guard, I had gotten a military technician
14:02:25 10 position, and as a result would be leaving the
14:02:26 11 contracting position.

14:02:28 12 Q. Why did you want to leave the contracting position?

14:02:32 13 A. The contracting position was very time-incen- --
14:02:40 14 very time-intensive as it relates to my evenings.

14:02:46 15 In 2010 -- before my daughter was 16, and I had
14:02:55 16 been working late nights, weekends throughout. I saw
14:03:00 17 the military technician position to be a way that I can
14:03:06 18 decrease my hours.

14:03:08 19 However, when I notified Mr. Hignite that I had
14:03:11 20 gotten the military technician position, he asked if I
14:03:16 21 could help him find a replacement.

14:03:18 22 Q. Okay. Now with respect to -- what did he -- did he
14:03:21 23 make any requests to you with respect to -- any other
14:03:26 24 requests to you besides finding a replacement --

14:03:33 25 MR. POTTER: Objection. Leading, Your Honor.

14:03:34 1 THE COURT: Sustained.

14:03:34 2 BY MR. JUPITER:

14:03:34 3 Q. What, if anything else, did he ask you?

14:03:37 4 A. Mr. Hignite asked if I would stay on and do the
14:03:44 5 ESGR contract until I could find him a qualified
14:03:47 6 replacement. He asked for my assistance in doing that.

14:03:52 7 Q. Okay. Now, with respect to doing that, did you
14:03:58 8 know of anything that was restricting you -- other than
14:04:03 9 the long hours, did you know of anything that was going
14:04:05 10 to restrict you from doing --

14:04:08 11 A. I know of nothing prohibiting --

14:04:10 12 MR. POTTER: Objection. Leading --

14:04:14 13 THE COURT: Stop.

14:04:15 14 Sustained.

14:04:15 15 BY MR. JUPITER:

14:04:15 16 Q. What was your understanding of your ability to do
14:04:17 17 that?

14:04:19 18 A. Military Personnel Services Corp is a private
14:04:24 19 entity, meaning it isn't a governmental entity. It is a
14:04:34 20 private corporation. As such, it is no different than
14:04:37 21 any other corporation that I would hold a contract with,
14:04:40 22 whether it is Hovensa Refinery or Triangle Construction
14:04:46 23 or if I was doing state work, social services or
14:04:51 24 Department of Planning and Natural Resources. It is no
14:04:53 25 different than any other contract that I performed on,

14:04:56 1 which basically my hours are never delineated beyond my
14:05:02 2 having to do presentations, if I was doing a leadership
14:05:06 3 training course.

14:05:08 4 Q. Okay.

14:05:09 5 A. That's the only time that I've ever had an hours
14:05:15 6 specified contract.

14:05:15 7 Q. You mentioned one of the positions you held in the
14:05:18 8 Guard was an HR specialist, correct?

14:05:20 9 A. Yes.

14:05:21 10 Q. Is there any --

14:05:23 11 A. HR, human resources officer.

14:05:26 12 Q. Human resources officer.

14:05:28 13 Is there anything that you had remembered from that
14:05:29 14 training that indicated that there was going to be a
14:05:31 15 problem?

14:05:32 16 A. No.

14:05:32 17 Q. Now -- and so what was your intent in terms of how
14:05:39 18 long you were going to stay on the ESGR contract after
14:05:43 19 you were hired as a military tech?

14:05:45 20 A. My intent was to find Mr. Hignite a qualified
14:05:54 21 replacement. I submitted to him, I remember it was at
14:05:57 22 least three names, Deja Clark, Kainuma Simmonds, and the
14:06:05 23 third person, Dazarene Lescott.

14:06:08 24 Q. Okay. So was he -- now, at this time in 2010, were
14:06:18 25 you able to continue on in both positions?

14:06:22 1 A. In June of 2010, General Lewis gave me a huge
14:06:29 2 assignment. He wanted me to conduct a strategic
14:06:33 3 leadership workshop for the National Guard. Basically,
14:06:38 4 I was responsible for pulling that entire workshop
14:06:42 5 together, for finding speakers, for selecting topics,
14:06:49 6 and basically putting on the presentations for that
14:06:53 7 leadership conference.

14:06:55 8 The leadership conference was for three days, if
14:07:00 9 I'm not mistaken, and it started pretty much at 8:00 in
14:07:07 10 the morning until like 5:00 each afternoon.

14:07:11 11 We flew in presenters that included high-level
14:07:18 12 military officers, as well as enlisted members --

14:07:23 13 Q. Okay.

14:07:24 14 A. -- the -- to do presentations, as well as some
14:07:27 15 local presenters.

14:07:29 16 MR. JUPITER: I want to show you what I am
14:07:33 17 marking as Defendant's Exhibit Number 1.

14:07:35 18 (Defendant's Exhibit 1 marked for identification.)

14:07:35 19 BY MR. JUPITER:

14:07:44 20 Q. This is a -- could you tell what this is?

14:07:47 21 A. This is a booklet that we created for the
14:07:49 22 leadership conference that started on September 18,
14:07:54 23 2010.

14:07:54 24 Q. And when did you, when did you get the assignment
14:07:58 25 to start putting this together?

14:08:00 1 A. I got the assignment in June 2010.

14:08:04 2 Q. And as a result of getting that assignment, what,
14:08:08 3 if anything, did you do?

14:08:09 4 A. I basically tendered my resignation from ESGR --
14:08:17 5 from the ESGR contract.

14:08:23 6 Q. At that time, was there a replacement for you?

14:08:27 7 A. No. But I could not handle the leadership
14:08:31 8 conference and my J5 position and the contract for ESGR.
14:08:40 9 It was just too much. It was -- the conference was too
14:08:46 10 demanding.

14:08:46 11 Q. After -- now, did you -- in handing over your
14:08:52 12 resignation to Mr. Hignite, did he make any requests to
14:08:57 13 you?

14:08:58 14 MR. POTTER: Objection, Your Honor.

14:09:00 15 THE WITNESS: He asked me to find him a --

14:09:02 16 THE COURT: Stop.

14:09:04 17 Next question.

14:09:05 18 BY MR. JUPITER:

14:09:05 19 Q. Did you have a conversation with Mr. Hignite,
14:09:09 20 without telling us the content of the conversation --

14:09:11 21 A. Yes, I did.

14:09:12 22 Q. -- after he got your resignation?

14:09:15 23 A. Yes, I did.

14:09:16 24 Q. As a result of that conversation, what did you do
14:09:19 25 as part -- what did you do for him?

14:09:21 1 A. I started to look for someone that was qualified to
14:09:25 2 take over -- well, not -- I didn't put out like a whole
14:09:30 3 lot of effort into it, but I tried my best to find
14:09:36 4 someone to take over the contract, because I resigned
14:09:38 5 from it and I really cared about the fact they wouldn't
14:09:43 6 have anyone to represent the service members.

14:09:46 7 Q. When you weren't able to do that, what happened in
14:09:48 8 terms of the activities with ESGR?

14:09:52 9 A. Nothing happened. Basically everyone still
14:09:57 10 continued to come to me to ask for assistance when they
14:10:02 11 needed it. And I gave assistance whenever I could.

14:10:10 12 At another point, Mr. Hignite asked me to
14:10:13 13 complete --

14:10:13 14 MR. POTTER: Objection, Your Honor.

14:10:14 15 THE COURT: Sustained.

14:10:15 16 BY MR. JUPITER:

14:10:16 17 Q. Without telling us -- just tell us what you did,
14:10:18 18 without telling us --

14:10:19 19 A. Okay. I completed the PEPAS report. I basically
14:10:25 20 still fielded any complaints that came in from service
14:10:28 21 members, and basically that was it.

14:10:37 22 Q. Okay. Now I want to draw your attention to
14:10:42 23 Government Exhibit Number 10.

14:11:27 24 You heard testimony, Colonel Cills testify about
14:11:33 25 Government's Exhibit 10, correct?

14:11:34 1 A. Yes, I did.

14:11:34 2 Q. Did you receive this e-mail from Colonel Cills?

14:11:38 3 A. Yes, I did.

14:11:39 4 Q. All right. And what is the e-mail dealing with?

14:11:43 5 A. The e-mail is dealing with ESGR funds.

14:11:47 6 Q. And when you say it's dealing with ESGR funds, what

14:11:51 7 does, what do you understand in terms of the

14:11:57 8 requirements of funding matters?

14:12:00 9 A. As --

14:12:01 10 MR. POTTER: Objection, again.

14:12:04 11 THE COURT: Overruled.

14:12:05 12 THE WITNESS: As an ESGR contractor is

14:12:08 13 responsible for spending ESGR funds.

14:12:11 14 BY MR. JUPITER:

14:12:11 15 Q. Can anyone -- can a volunteer do that?

14:12:14 16 A. No.

14:12:15 17 Q. And so when she was -- and who did you deal with in

14:12:19 18 terms of the expenditure of funds when you were doing

14:12:22 19 this in 2010?

14:12:23 20 A. Colonel Linda Cills.

14:12:31 21 Q. And during this time period, were you still the

14:12:37 22 ESGR contractor?

14:12:38 23 A. Yes, I was.

14:12:39 24 Q. Okay. Now, what was your intent during -- at that

14:12:42 25 particular time with respect to the ESGR position, this

14:12:47 1 e-mail dated April 12, 2010?

14:12:50 2 A. I was the ESGR contractor. I was looking for a
14:12:55 3 replacement. However, I still handled all the ESGR
14:13:04 4 contracting responsibilities because I still had the
14:13:06 5 contract.

14:13:07 6 Q. Okay. So you see that this -- in this particular
14:13:12 7 exhibit someone underlined, there's -- someone put on
14:13:21 8 the side of the paragraph in your response, the sentence
14:13:24 9 that says, "I'll still" -- "I'll be staying on in a
14:13:29 10 volunteer capacity." What were you trying to convey at
14:13:34 11 that, in terms of your intent?

14:13:36 12 A. I conveyed that as far as ESGR, I will be staying
14:13:45 13 on in a volunteer capacity.

14:13:46 14 Q. And what were you talking about, in reference to
14:13:48 15 what time period?

14:13:50 16 A. When I vacated the contract.

14:13:53 17 Q. Okay. And with respect to what you were doing at
14:13:59 18 that particular time, what was your understanding --
14:14:01 19 what were you -- what role were you -- what role were
14:14:03 20 you in at that time?

14:14:04 21 A. I was the ESGR -- I still had the ESGR contract.

14:14:10 22 Q. And with respect to -- did you continue to do
14:14:13 23 funding?

14:14:16 24 A. Yes, I did. I --

14:14:17 25 Q. And who did you --

14:14:19 1 A. I continued to obligate funds for my events. I
14:14:27 2 continued to obligate funds for our giveaway items,
14:14:32 3 whether T-shirt, pens, things of that matter. I
14:14:34 4 continued to obligate funds for venues where the events
14:14:42 5 were being held.

14:14:42 6 Q. Were you planning on being a volunteer in ESGR?

14:14:44 7 A. Absolutely. It's a program that I really believe
14:14:48 8 in.

14:14:48 9 Q. And when did you plan to act in a volunteer
14:14:53 10 capacity with ESGR?

14:14:54 11 MR. POTTER: Objection, Your Honor.

14:14:55 12 THE WITNESS: As soon as I gave up the
14:14:57 13 contract.

14:14:57 14 THE COURT: Overruled.

14:15:15 15 BY MR. JUPITER:

14:15:15 16 Q. Did there come a time when you went back to the
14:15:17 17 ESGR contract?

14:15:18 18 A. As soon as I was done with the leadership
14:15:21 19 contract -- the leadership conference, I received a call
14:15:26 20 from Mr. Hignite regarding the ESGR contract. He -

14:15:31 21 Q. Okay. As a result of that call, what did you end
14:15:33 22 up doing?

14:15:34 23 A. I ended up taking back up the ESGR contract, since
14:15:41 24 they had no qualified individual to do it.

14:15:44 25 Q. Was it your intent to keep the ESGR contract?

14:15:47 1 A. I actively kept looking for a replacement for the
14:15:54 2 contract.

14:15:54 3 Q. Why were you looking for a replacement for a
14:15:57 4 contract that was paying you money?

14:16:00 5 A. Basically, I knew that I did not want to continue
14:16:05 6 with the late hours and the weekends. I have one child,
14:16:11 7 and that's who suffered the most with my long hours --
14:16:17 8 well, actually my daughter and my now ex-husband.

14:16:22 9 Q. Now, with regard to -- did you finally, did you
14:16:30 10 finally come up with someone who was acceptable?

14:16:32 11 A. Yes.

14:16:34 12 Q. Okay. And who was that?

14:16:36 13 A. Mrs. Janice Aelleyne.

14:16:41 14 Q. How far back did you put in place to have
14:16:45 15 Ms. Aelleyne come and take over your contract position?

14:16:48 16 MR. POTTER: Objection, Your Honor. Leading.

14:16:54 17 THE COURT: Overruled.

14:16:55 18 THE WITNESS: I initially spoke to
14:16:58 19 Mrs. Aelleyne in November of 2010, and started to plan
14:17:00 20 for her to go to training, so that no one would say she
14:17:05 21 was not qualified. So I coordinated a series of
14:17:09 22 training for her to attend.

14:17:11 23 MR. JUPITER: Okay. I want to show you what's
14:17:12 24 been marked as Defendant's Exhibit Number 8.

14:17:12 25 (Defendant's Exhibit 8 marked for identification.)

14:17:12 1 BY MR. JUPITER:

14:17:22 2 Q. And this is a three-page document. I want you to
14:17:24 3 look at the front and then the second page, and the
14:17:35 4 third page.

14:17:41 5 Do you recognize that document?

14:17:43 6 A. I do. But you went a little bit fast with the
14:17:46 7 second page.

14:17:47 8 Q. The second page?

14:17:48 9 A. If I could see the second page.

14:17:49 10 Uhm-hmm.

14:17:56 11 Q. Okay?

14:17:57 12 A. Yes.

14:17:57 13 Q. And the third page.

14:18:03 14 A. Yes.

14:18:04 15 Q. Can you tell me what that document is?

14:18:06 16 A. The document is an invitational travel order for
14:18:11 17 Mrs. Aelleyne to attend training, I believe it was in
14:18:16 18 Florida, from Maryland where she resided.

14:18:18 19 Q. And who did that come from?

14:18:19 20 A. That came from me.

14:18:21 21 Q. Okay. But who did -- okay. The first page of that
14:18:25 22 document is in the form of what?

14:18:27 23 A. It's in the form of an e-mail.

14:18:29 24 Q. And who's the e-mail from?

14:18:32 25 A. The e-mail is from Colonel Linda Cills.

14:18:36 1 Q. And with regard to a category, what category of
14:18:40 2 your duties would this fall under?

14:18:44 3 A. Colonel Cills was talking to me about the funding
14:18:47 4 for Mrs. Aelleyne's travel -- well, in the e-mail it's
14:18:50 5 about the funding for Mrs. Aelleyne's travel. She was
14:18:54 6 in receipt of the invitational travel order that I had
14:18:57 7 set up.

14:18:58 8 Q. Okay. Now, did you have any discussions with
14:19:08 9 Colonel Lewis about Ms. Aelleyne?

14:19:12 10 A. Yes, I did.

14:19:13 11 Q. Now, as a result of those discussions, what did you
14:19:16 12 do?

14:19:19 13 A. I started to send Mrs. Aelleyne with a command
14:19:29 14 concurrence for training to take over the ESGR contract.

14:19:51 15 Q. Did Mr. -- did Colonel Lewis tell you -- well,
14:19:58 16 first of all, let me ask you this: Was Colonel Lewis
14:20:10 17 involved in any way in you finding the replacement for
14:20:15 18 yourself?

14:20:15 19 MR. POTTER: Objection. Leading, Your Honor.

14:20:17 20 THE COURT: Rephrase.

14:20:18 21 BY MR. JUPITER:

14:20:18 22 Q. What, if any, role Colonel Lewis played in all of
14:20:22 23 this?

14:20:23 24 MR. POTTER: Objection. Leading, Your Honor.

14:20:24 25 THE COURT: Overruled.

14:20:25 1 BY MR. JUPITER:

14:20:25 2 Q. You may answer.

14:20:26 3 A. General Lewis concurred with Mrs. Aelleyne's
14:20:31 4 replacing me for the contract, and basically I stayed as
14:20:37 5 a placeholder until Mrs. Aelleyne could leave Maryland
14:20:42 6 in June of 2011.

14:20:46 7 Q. With respect to you staying as a placeholder, who
14:20:51 8 asked you to do that?

14:20:53 9 A. General Lewis.

14:20:55 10 Q. Okay. And what time period is this?

14:20:59 11 A. This was around November of 2010.

14:21:04 12 Q. Okay. And with respect to Mrs. Aelleyne's
14:21:11 13 availability, what did you understand in terms of when
14:21:15 14 she was going to be able to come?

14:21:18 15 A. Mrs. Aelleyne was a teacher with the Maryland
14:21:22 16 school system, and she was completing her PhD and was
14:21:28 17 not available --

14:21:30 18 MR. POTTER: Objection, Your Honor.

14:21:32 19 THE COURT: Overruled.

14:21:33 20 MR. JUPITER: Go ahead.

14:21:34 21 THE WITNESS: -- was not available until the
14:21:35 22 end of the school year to take over the contract.

14:21:40 23 BY MR. JUPITER:

14:21:40 24 Q. Did you convey that information to General Lewis?

14:21:44 25 A. To -- yes.

14:21:46 1 Q. Okay. And after that, did you move forward with
14:21:51 2 this plan?

14:21:52 3 A. Yes. I started to organize training for
14:21:55 4 Mrs. Aelleyne, which she attended.

14:21:59 5 Q. Okay. I want to talk to you a little bit about
14:22:02 6 Dazarene Lescott.

14:22:04 7 A. Yes.

14:22:05 8 Q. How did she come to be hired?

14:22:07 9 A. Ms. Lescott came to be hired because when I had the
14:22:13 10 conversation with Mr. Hignite, I told him the only way I
14:22:17 11 would take over the contract was if I had an assistant.

14:22:22 12 Q. What was she -- what was her role?

14:22:24 13 A. She was a secretary.

14:22:25 14 Q. Okay. Now --

14:22:27 15 A. Basically.

14:22:28 16 Q. Now, could you explain -- did you have any
14:22:30 17 conversation with her with regard to weekend hours?

14:22:34 18 A. The ESGR contract was such that I wanted her to
14:22:40 19 understand that for when she worked evenings or
14:22:45 20 weekends, she could take a day off during the week.
14:22:48 21 Because you could not allocate more than 40 hours in any
14:22:54 22 given week.

14:22:56 23 Q. You heard her testimony, that you told her that
14:22:59 24 anything on the weekends was volunteer. Did you tell
14:23:03 25 her that?

14:23:04 1 A. Never. No.

14:23:04 2 Q. Did you advise her with regard to timekeeping on
14:23:09 3 weekends?

14:23:09 4 MR. POTTER: Objection. Leading, Your Honor.

14:23:10 5 THE COURT: Sustained.

14:23:11 6 BY MR. JUPITER:

14:23:11 7 Q. What did you advise her with regard to timekeeping?

14:23:14 8 A. As it relates to timekeeping, the Deltek system is
14:23:20 9 built such that you can only enter time from Monday
14:23:23 10 through Friday, 8:00 to 5:00. If work was required on
14:23:30 11 the weekend, we could switch out the time for the
14:23:34 12 weekend by giving her a day off during the week, which I
14:23:38 13 did.

14:23:40 14 Q. Now, had you -- how are her duties different from
14:23:47 15 yours?

14:23:49 16 A. Ms. Lescott was an administrative assistant.
14:23:54 17 Basically she did secretarial duties. I was an
14:24:00 18 executive director for, on the ESGR contract, and as
14:24:04 19 such I was responsible for any mediation briefings,
14:24:10 20 building the volunteer committee, finding a state chair,
14:24:15 21 holding the events and doing the briefings. She was not
14:24:22 22 qualified to do any briefings.

14:24:23 23 Q. What did you do -- how often would you meet with
14:24:26 24 her?

14:24:28 25 A. I met with her probably maybe twice a month, if

14:24:31 1 that much.

14:24:33 2 Q. Okay. And when you met with her, how long would
14:24:36 3 you meet?

14:24:37 4 A. Ten, twenty minutes, basically. Each time that she
14:24:42 5 came over here was to pick up supplies for events for
14:24:48 6 St. Thomas. We had ordered T-shirts, coffee mugs, a
14:24:54 7 whole lot of giveaway items. And she would basically
14:24:59 8 come by, pick it up, we'd have a short conversation and
14:25:06 9 then she would leave.

14:25:06 10 Q. With regard to the PEPAS report, is that something
14:25:09 11 that you had to do with her, or without her?

14:25:11 12 A. Well, PEPAS report she could do to a limited
14:25:16 13 extent. Basically, her responsibility as far as PEPAS
14:25:20 14 report was to keep track of the events that we had.

14:25:26 15 Q. You heard the testimony of Staff Advocate Judge
14:25:35 16 Marise James, and she indicated she had a conversation
14:25:41 17 with you at an event at The Palms. Did you see Marise
14:25:45 18 James at the event at The Palms?

14:25:48 19 A. The event that Major James referred to was on
14:25:55 20 St. Thomas, and yes, I did see her at that event, and I
14:25:59 21 welcomed her back.

14:26:00 22 Q. Did you convey to her that you were a volunteer?

14:26:04 23 A. No.

14:26:05 24 Q. Okay. At any time that you held this ESGR contract
14:26:11 25 position, did you tell anyone that you were a volunteer?

14:26:13 1 A. No, I didn't.

14:26:15 2 MR. POTTER: Objection, Your Honor. Leading.

14:26:16 3 THE COURT: Sustained.

14:26:29 4 BY MR. JUPITER:

14:26:29 5 Q. As ESGR -- well, let me ask you this: What's a
14:26:36 6 Boss Lift, B-o-s-s, L-i-f-t?

14:26:39 7 A. The Boss Lift is an event where we invite employers
14:26:44 8 on basically to familiarize them and orient them to our
14:26:49 9 program, to the ESGR program. It is a trip that they
14:26:54 10 are scheduled on the -- we -- in this event we used the
14:27:02 11 National Guard plane to Puerto Rico to hold the Boss
14:27:07 12 Lift.

14:27:07 13 Q. And when was that?

14:27:11 14 A. I think it was April of 2010, or April or May of
14:27:17 15 2010.

14:27:17 16 Q. Okay. Did anyone in the leadership attend the Boss
14:27:22 17 Lift?

14:27:22 18 MR. POTTER: Objection.

14:27:24 19 THE WITNESS: General Rivera attended the Boss
14:27:28 20 Lift.

14:27:28 21 THE COURT: Go ahead.

14:27:29 22 BY MR. JUPITER:

14:27:31 23 Q. And in terms of who can put on the Boss Lift, whose
14:27:36 24 responsibility is that?

14:27:37 25 A. Only the ESGR contractor can put on the Boss Lift,

14:27:41 1 because it involves funds.

14:27:43 2 Q. You heard the testimony of General Lewis with
14:27:48 3 respect to conversation that he had with you regarding
14:27:52 4 the ESGR position. Is that true?

14:27:55 5 MR. POTTER: Objection, Your Honor.

14:27:56 6 THE COURT: Sustained.

14:27:58 7 BY MR. JUPITER:

14:27:59 8 Q. Could you tell us about any conversations with
14:28:03 9 General Lewis about holding these two positions?

14:28:07 10 A. We never had any conversation, other than my
14:28:13 11 assisting him in finding a replacement.

14:28:18 12 Q. And you conveyed -- and what was it that you
14:28:20 13 conveyed to him?

14:28:22 14 MR. POTTER: Objection. Leading, Your Honor.

14:28:24 15 THE COURT: Overruled.

14:28:27 16 THE WITNESS: I basically conveyed to him that
14:28:29 17 we were looking for a replacement -- as a matter of
14:28:32 18 fact, he met with one of the persons that I recommended,
14:28:39 19 Ms. Kainuma Simmonds.

14:28:45 20 BY MR. JUPITER:

14:28:45 21 Q. Now, General Lewis, when he held the position as
14:28:47 22 your supervisor, did he hold any meetings?

14:28:54 23 A. Yes.

14:28:54 24 Q. Can you tell us about the staff meetings?

14:28:56 25 A. We had staff meetings every Tuesday at the

14:29:00 1 National Guard headquarters. Each directorate, which I
14:29:06 2 was one, the J5 directorate, had to submit our
14:29:13 3 presentation slides for that meeting.

14:29:18 4 Q. And with regards to those, did you -- what else did
14:29:21 5 you have to do at the meeting?

14:29:23 6 A. Briefed on my strategic plans and policy position,
14:29:29 7 as well as the ESGR contract.

14:29:31 8 Q. So would you, when you were ESGR contractor, alone,
14:29:36 9 did you submit, did you brief on ESGR?

14:29:40 10 A. I did. Yes.

14:29:42 11 Q. Okay. Did you continue to do so after you were
14:29:46 12 hired?

14:29:47 13 MR. POTTER: Objection, Your Honor.

14:29:49 14 THE WITNESS: I did.

14:29:49 15 THE COURT: Sustained.

14:29:50 16 BY MR. JUPITER:

14:29:50 17 Q. What did you do with respect to those briefings
14:29:53 18 after you were hired?

14:29:54 19 A. After I was hired, I briefed on the complaints that
14:29:58 20 I received, and any problems -- any problems that the
14:30:04 21 service members were encountering as it relates to the
14:30:12 22 USERRA, the law, and their return back from their
14:30:16 23 deployment.

14:30:29 24 Q. Ms. Morales, did you ever try to trick anyone with
14:30:37 25 respect to your position with ESGR?

14:30:40 1 A. I did not. I never tried to trick anyone. I
14:30:43 2 held -- I continued to hold events as an ESGR
14:30:47 3 contractor. I continued to do the briefings, the
14:30:51 4 reintegration briefings, which were required
14:30:55 5 pre-deployment and post-deployment at the 30-, 60- and
14:30:59 6 90-day mark. I continued to meet with employers as well
14:31:05 7 as service members regarding any issues that potentially
14:31:09 8 came up as it relates to their full-time employment.
14:31:27 9 Q. Was ESGR an 8:00 to 5:00 position?
14:31:30 10 A. Never.
14:31:52 11 Q. With respect to your weekend hours, how long would
14:31:57 12 you work over the weekends?
14:31:58 13 A. Basically about 20, 25 hours on the weekends.
14:32:05 14 Q. You combined Saturday and Sunday?
14:32:08 15 A. Correct.
14:32:08 16 Q. And where would you provide those hours when you
14:32:12 17 held the military tech position and you held the ESGR
14:32:16 18 position?
14:32:17 19 A. I conducted -- I held hours both at my real estate
14:32:22 20 office and at the National Guard -- in my office at the
14:32:25 21 National Guard.
14:32:29 22 Q. With respect to during the week, how many hours
14:32:33 23 were you putting in during the week, Monday through
14:32:35 24 Friday?
14:32:36 25 A. Basically, five, six hours every day, because I had

14:32:44 1 to return calls in the evenings, yeah, and meet with
14:32:48 2 volunteers.

14:32:52 3 MR. JUPITER: I tender the witness, Your Honor.

14:32:53 4 THE COURT: Attorney Potter?

14:32:55 5 MR. POTTER: Thank you, Judge.

14:33:00 6 CROSS-EXAMINATION

14:33:01 7 BY MR. POTTER:

14:33:02 8 Q. Good afternoon, Mrs. Morales.

14:33:03 9 A. Good afternoon, Mr. Potter.

14:33:15 10 Q. Now, your --

14:33:20 11 MR. JUPITER: I'm sorry, Your Honor. I move to
14:33:22 12 admit Defense Exhibit Number 1 and Defense Exhibit
14:33:27 13 Number 8.

14:33:33 14 THE COURT: Attorney Potter?

14:33:34 15 MR. POTTER: We object, Your Honor.

14:33:35 16 THE COURT: To each of them?

14:33:37 17 MR. POTTER: To each of them.

14:33:38 18 THE COURT: All right. It's under advisement.

14:33:41 19 Place Number 8 on the Elmo, Attorney Jupiter,
14:33:44 20 please.

14:33:56 21 MR. JUPITER: It's three pages.

14:34:06 22 THE COURT: Turn to the second page, please.
14:34:21 23 Third.

14:34:46 24 All right. Thank you.

14:34:47 25 Under advisement.

14:35:04 1 BY MR. POTTER:

14:35:05 2 Q. Ms. Morales, you were hired by the National Guard
14:35:08 3 when?

14:35:08 4 A. Which position, sir?

14:35:10 5 Q. The initial time you came on with the National
14:35:12 6 Guard?

14:35:14 7 A. In 1984.

14:35:18 8 Q. And you worked for them for --

14:35:21 9 A. Twenty-one years.

14:35:29 10 Q. And in those 21 years, you were not an actually
14:35:34 11 employee, were you?

14:35:35 12 A. Excuse me?

14:35:36 13 Q. In those 21 years as a full-time member of the
14:35:43 14 Guard, you were a full-time member for the Guard in
14:35:45 15 those 21 years?

14:35:46 16 A. In those 21 years, I served as military technician
14:35:50 17 as well as active Guard officer.

14:35:56 18 Q. And in those 21 years that you were with the Guard,
14:36:00 19 you never held outside employment, full-time, at the
14:36:04 20 same hours you were working for the Guard, did you?

14:36:07 21 A. No, I did not.

14:36:15 22 Q. And you didn't do that because you know that's
14:36:18 23 something that you were not permitted to do?

14:36:21 24 A. That is not true.

14:36:28 25 Q. You have a master's degree?

14:36:29 1 A. Yes, I do.

14:36:31 2 Q. You have very extensive knowledge and training in
14:36:40 3 the Guard, in the rules and regulations that the Guards
14:36:44 4 abide by, do you not?

14:36:46 5 A. I have extensive training in the Guards in a number
14:36:50 6 of areas, and that's why they said that I was excellent
14:36:55 7 at what I do.

14:36:56 8 Q. I'm not disputing that.

14:37:01 9 The --

14:37:05 10 MR. POTTER: Can I bring up Government's
14:37:05 11 Exhibit 1.8?

14:37:27 12 Can we have it published, Your Honor? I think it's
14:37:31 13 been admitted.

14:37:46 14 (Exhibit published.)

14:37:46 15 BY MR. POTTER:

14:37:46 16 Q. Ms. Morales, this is your resume?

14:37:49 17 A. That is correct.

14:37:51 18 Q. And you submitted that resume to the National Guard
14:37:54 19 when you were trying to get rehired in 2010; is that
14:37:59 20 correct?

14:38:00 21 A. The National Guard got my resume after the fact. I
14:38:06 22 had already started, employed when I turned -- when I
14:38:09 23 gave them my resume.

14:38:10 24 Q. And that's the resume you gave to them?

14:38:13 25 A. I believe so, uhm-hmm.

14:38:14 1 Q. Is there a reason you didn't list that you were
14:38:17 2 full-time military -- that you were full-time ESGR
14:38:21 3 person with the MPSC on your resume?

14:38:28 4 A. There are a number of positions that are not on my
14:38:31 5 resume. My position as a logistics management officer
14:38:35 6 in the Guard is not on my resume. My position as
14:38:40 7 assistant analyst is not on my resume.

14:38:43 8 Q. Is there a reason --

14:38:45 9 A. My position with the MPSC.

14:38:48 10 Q. Is there a reason the MPSC --

14:38:51 11 A. There's no reason for it to be there. It was a
14:38:53 12 contracting position. None of my contracting positions
14:38:56 13 are on there, neither Hovensa or Triangle or MPSC.

14:39:02 14 Q. Okay. You have on there that you're a financial
14:39:10 15 planner?

14:39:10 16 A. Correct.

14:39:11 17 Q. You have specific training in that, ma'am?

14:39:13 18 A. I got my Series 6 licenses.

14:39:16 19 Q. Just a yes or no. Do you have specific training in
14:39:20 20 that?

14:39:20 21 A. I had training for financial planning, correct.

14:39:24 22 Q. And you were the human resource director for the
14:39:27 23 Virgin Islands National Guard, weren't you?

14:39:29 24 A. Yes, I was.

14:39:30 25 Q. And you were familiar with the rules and

14:39:32 1 regulations with respect to employment matters with
14:39:36 2 respect to the National Guard?

14:39:37 3 A. Absolutely.

14:39:39 4 Q. Yes.

14:39:46 5 And you were also the chief negotiator for labor
14:39:50 6 contracts for civil service employees when you were with
14:39:54 7 the National Guard --

14:39:57 8 A. The --

14:39:58 9 Q. -- is that correct?

14:39:59 10 A. -- union -- yes.

14:40:00 11 Q. Yes?

14:40:01 12 A. That was when the union came into effect in the
14:40:06 13 National Guard.

14:40:07 14 Q. And you were familiar with the chief labor
14:40:10 15 contractor, you're very familiar with the rules and
14:40:13 16 policies of the National Guard with respect to
14:40:17 17 employees, and specifically with respect to military
14:40:21 18 technicians, are you not?

14:40:22 19 A. I am.

14:40:28 20 Q. So when you started in 2007 as the ESGR
14:40:40 21 representative, were you not told that you're a contract
14:40:45 22 employee, ma'am?

14:40:46 23 A. Absolutely not. I was told I was a contractor.

14:40:51 24 Q. Were you given an employee handbook at the time,
14:40:54 25 ma'am?

14:40:55 1 A. I have one --

14:40:57 2 Q. You don't recall whether or not you got an employee
14:41:00 3 handbook when you started with the --

14:41:01 4 A. Basically --

14:41:02 5 Q. -- ESGR?

14:41:04 6 A. -- when I started ESGR, I was on St. Croix. The
14:41:06 7 first training --

14:41:07 8 Q. The question is, did you get --

14:41:09 9 A. I --

14:41:09 10 Q. -- the ESGR employee handbook?

14:41:13 11 A. I really don't recall. I'm sorry.

14:41:16 12 Q. And in that employee handbook, it would list you as
14:41:19 13 an employee, a contract employee --

14:41:22 14 A. I can't --

14:41:23 15 Q. -- of the MPSC?

14:41:28 16 MR. JUPITER: Objection, Your Honor. She said
14:41:29 17 she don't recall.

14:41:30 18 THE COURT: In order to have a clear record,
14:41:32 19 only one person can speak at a time.

14:41:33 20 So if the objection is interposed, wait till the
14:41:38 21 Court rules on it before anyone speaks.

14:41:41 22 Okay. Go ahead.

14:41:44 23 BY MR. POTTER:

14:41:44 24 Q. Ms. Lescott was also a contract employee?

14:41:48 25 A. Yes, she was.

14:41:51 1 Q. And she had set hours, didn't she?

14:41:54 2 A. As a secretary, absolutely.

14:41:56 3 Q. As a contract employee she had set hours, didn't
14:42:01 4 she?

14:42:01 5 A. As a secretary, yes, she did.

14:42:05 6 Q. She was equal to you, was she not?

14:42:14 7 A. Never.

14:42:17 8 Q. You were above her?

14:42:19 9 A. I was an executive director for the program.

14:42:33 10 Q. And your hours, whether executive assistant or not,
14:42:39 11 were prescribed by Mr. Hignite, and those were 9:00 to
14:42:43 12 5:00; isn't that true?

14:42:45 13 A. That is false.

14:42:46 14 MR. JUPITER: Objection. Compound, Your Honor.

14:42:48 15 THE COURT: Okay. Overruled.

14:42:50 16 THE WITNESS: That is false. And I -- just for
14:42:53 17 clarification, I was the --

14:42:54 18 BY MR. POTTER:

14:42:55 19 Q. No clarification necessary.

14:42:57 20 A. Okay.

14:43:06 21 Q. And if you are a contract employee and Ms. Lescott
14:43:13 22 is also a contract employee, you are not her supervisor;
14:43:17 23 isn't that true?

14:43:18 24 A. Pardon?

14:43:19 25 Q. If you are a contract employee for the ESGR and

14:43:26 1 Mrs. Lescott is a contract employee for the ESGR, you
14:43:30 2 are both contract employees, correct?
14:43:32 3 A. We were both contractors, correct.
14:43:38 4 Q. And you heard her testify that her hours were 9:00
14:43:40 5 to 5:00?
14:43:43 6 A. Her hours were from 8:00 to 4:00, if I recall
14:43:47 7 correctly.
14:43:48 8 Q. And you're saying your hours were whenever you
14:43:51 9 wanted to work, or not work?
14:43:53 10 A. As the executive director, I did not have any set
14:43:58 11 hours as an MPSC contractor, no.
14:44:01 12 Q. Okay. So in spite of what the handbook may have
14:44:09 13 said, you worked however and whenever you want to work?
14:44:14 14 A. I did that for three years.
14:44:21 15 Q. And in 2010, when you were, you had no desire to
14:44:28 16 get back into the Guard?
14:44:30 17 A. General Lewis contacted me regarding --
14:44:35 18 Q. Yes, but did you have a desire to get back into the
14:44:38 19 Guard?
14:44:38 20 A. I had no issue with it.
14:44:42 21 Q. You had no issue with getting back into the Guard?
14:44:44 22 A. No.
14:44:48 23 Q. It's something that you wanted to do?
14:44:50 24 A. Yes.
14:45:00 25 Q. Didn't General Lewis tell you that you can't have

14:45:08 1 two positions full-time, eight hours a week, so you had
14:45:14 2 to resign?

14:45:15 3 A. Never had that conversation with General Lewis.

14:45:22 4 Q. When you were hired in 2010 as a full-time member
14:45:26 5 of the Guard, what were your hours?

14:45:30 6 A. I basically got into work about 7:15 to 7:30.

14:45:36 7 Q. What were the set hours for someone in your
14:45:38 8 position?

14:45:41 9 A. As a director, again, we do not have set hours.

14:45:49 10 Q. So any -- so, again, as a military tech person, you
14:45:54 11 work whatever hours you wanted to work?

14:45:56 12 A. I reported to work between 7:15 and 7:30, and I
14:46:02 13 stayed to work until late at night.

14:46:05 14 Q. And you worked five days a week for the ESGR?

14:46:14 15 A. I worked seven days a week for ESGR.

14:46:19 16 Q. And you were paid for how much?

14:46:22 17 A. I was paid for 40 hours for ESGR.

14:46:24 18 Q. And you were paid for 40 hours for the military
14:46:29 19 position, also, weren't you?

14:46:31 20 A. I was paid for 40 hours.

14:46:32 21 Q. So you were paid 80 hours, you were paid 80 hours
14:46:39 22 for a 40-hour workweek; is that true?

14:46:43 23 A. That is false.

14:46:46 24 Q. No one authorized that, Ms. Morales; isn't that
14:46:51 25 true?

14:46:51 1 No one authorized that?

14:46:52 2 A. No one authorized what?

14:46:54 3 Q. That.

14:46:57 4 A. That?

14:46:58 5 Q. Your working -- your being paid for 80 hours in a
14:47:03 6 40-hour week?

14:47:06 7 A. I can't -- no, I had no conversation with anyone as
14:47:12 8 it relates to my ESGR contract hours.

14:47:16 9 Q. Mr. Hignite didn't know that you were a full-time
14:47:21 10 employee of the National Guard?

14:47:23 11 A. Mr. Hignite testified that I called him and told
14:47:26 12 him I got hired at the National Guard, which was true.

14:47:32 13 Q. He told you that? June -- I think his testimony
14:47:36 14 was in June of 2010, that you contacted him --

14:47:42 15 MR. JUPITER: Objection, Your Honor.

14:47:43 16 THE COURT: Sustained.

14:47:49 17 BY MR. POTTER:

14:47:49 18 Q. What about March to June?

14:47:50 19 A. When I --

14:47:51 20 Q. You didn't tell Mr. Hignite that you were a
14:47:53 21 full-time member of the Guard between March and June;
14:47:56 22 isn't that true?

14:47:57 23 A. That is false.

14:48:13 24 Q. You didn't tell anyone in the Guard, Ms. Morales,
14:48:17 25 that you were working two jobs, getting paid 80 hours in

14:48:24 1 a 40-hour week. You didn't tell them that, didn't you?

14:48:29 2 A. Everyone in the Guard knew I was the contractor for

14:48:33 3 ESGR and the military technician. I never hid any of my

14:48:40 4 duties at any time.

14:48:40 5 Q. But you hid that you were being paid.

14:48:45 6 A. No, I did not.

14:48:47 7 Q. You told Major James that you were volunteering --

14:48:51 8 A. I did not.

14:48:52 9 Q. -- because you were hiding the fact that you were

14:48:54 10 being paid?

14:48:57 11 A. I did not.

14:48:58 12 Q. You told --

14:49:03 13 MR. POTTER: Can we see -- let me see

14:49:08 14 Government's Exhibit Number 10.

14:49:33 15 Can we have it published?

14:49:34 16 (Exhibit published.)

14:49:36 17 BY MR. POTTER:

14:49:37 18 Q. So you know Colonel Cills?

14:49:38 19 A. Yes, I know Colonel Cills.

14:49:40 20 Q. You know her very well? Colonel Cills?

14:49:42 21 A. I know she works with me -- worked with me in the

14:49:45 22 National Guard. What do you define as "very well"?

14:49:49 23 Q. Well, do you know who she is?

14:49:51 24 A. I do. I've said that.

14:49:52 25 Q. And you've seen her around the National Guard in

14:49:54 1 the 20 years or so that you have been a member of the
14:49:57 2 Guard?

14:49:57 3 A. Colonel Cills worked for me, as a matter of fact,
14:50:02 4 in the National Guard.

14:50:04 5 Q. You know better. Yes.

14:50:06 6 So in April -- when were you hired as a full-time
14:50:10 7 military tech person in the National Guard?

14:50:12 8 A. In March of 2010.

14:50:14 9 Q. So right after you were hired, approximately, maybe
14:50:20 10 a little bit more than a month, about a month later,
14:50:25 11 Colonel Cills sends you this e-mail, and she says, "I
14:50:32 12 know you are no longer the ESGR coordinator."

14:50:41 13 Did you respond and say, "No, no, I am still"?

14:50:44 14 Did you correct her, that she was in error?

14:50:46 15 A. I was never the ESGR coordinator.

14:50:51 16 Q. We could play semantics, but she -- did you correct
14:50:55 17 her?

14:50:56 18 A. There was no need for me -- I addressed what she
14:50:59 19 wanted me to address, which was the funding. The only
14:51:03 20 way I can address that is as a contractor.

14:51:05 21 Q. And you said you're volunteering, you're going to
14:51:09 22 remain on as a volunteer?

14:51:10 23 A. A volunteer cannot handle the ESGR funding, which
14:51:15 24 Colonel Cills is aware of.

14:51:16 25 Q. But you said Mr. Hignite authorized to do that.

14:51:19 1 Isn't that what you said in that e-mail?

14:51:20 2 A. A contractor cannot -- is the only person that can
14:51:25 3 handle ESGR funds. A volunteer cannot.

14:51:34 4 Q. You were deceiving Linda Cills by saying, "I am
14:51:45 5 going to remain on in a voluntary capacity," when you
14:51:53 6 know you were actually being paid; isn't that true?

14:51:57 7 A. No.

14:52:15 8 Q. You submitted a letter of resignation from the
14:52:22 9 MPSC -- to the MPSC in June of 2010; is that correct?

14:52:31 10 A. Yes.

14:52:36 11 Q. So when you submitted that letter, you were very
14:52:44 12 much aware of this conversation that you had with Linda
14:52:51 13 Cills, where you were indicating to her that you had
14:52:55 14 already left that position. Isn't that true?

14:52:57 15 A. That is false.

14:53:14 16 Q. Now, in Two Thousand- -- I think your testimony was
14:53:20 17 that in 2010, you had a desire to get back to ESGR?

14:53:30 18 MR. JUPITER: Object, Your Honor.

14:53:32 19 THE COURT: Overruled.

14:53:36 20 THE WITNESS: What I said is that I had a
14:53:40 21 desire -- no, I did not.

14:53:41 22 BY MR. POTTER:

14:53:42 23 Q. You had no desire to get back to work for the ESGR?

14:53:45 24 A. I have no idea what you're asking me.

14:53:48 25 Q. Okay. Did you go to Mr. Hignite and indicate to

14:54:01 1 him that you were not being challenged enough, you
14:54:06 2 didn't like your military tech position, and you wanted
14:54:10 3 to be rehired as the ESGR representative?

14:54:14 4 A. That is false.

14:54:26 5 Q. But ultimately that's what happened, though. You
14:54:30 6 asked to be hired?

14:54:31 7 A. That is false.

14:54:35 8 Q. You're saying he begged you?

14:54:36 9 A. Mr. Hignite called me and told me he couldn't find
14:54:39 10 anyone that was qualified for the position, and would I
14:54:42 11 be willing to come back.

14:54:45 12 Q. So in your view, he begged you to come back because
14:54:49 13 only you could fill this position?

14:54:56 14 Yes?

14:54:57 15 A. Mr. Hignite asked me to come back into the contract
14:55:00 16 position because he could not find anyone else that was
14:55:04 17 qualified.

14:55:06 18 Q. And with how your testimony was, that you were so
14:55:09 19 busy, you couldn't find enough hours in the day to get
14:55:13 20 things done --

14:55:14 21 MR. JUPITER: Your Honor, I object to counsel
14:55:15 22 being argumentative. This is argumentative.

14:55:19 23 THE COURT: All right. Sustained.

14:55:20 24 BY MR. POTTER:

14:55:20 25 Q. You decided to jump back into the ESGR position?

14:55:29 1 A. I don't understand your question.

14:55:30 2 Q. You never told anybody at the National Guard that
14:55:48 3 you were rehired as a full-time ESGR contract employee?

14:55:56 4 MR. JUPITER: Objection. Asked and answered.

14:55:59 5 THE COURT: Overruled.

14:56:03 6 THE WITNESS: What was your question? I'm
14:56:05 7 sorry.

14:56:05 8 BY MR. POTTER:

14:56:05 9 Q. You didn't tell anybody in the Guard that you were
14:56:10 10 hired back as a full-time ESGR, 9:00 to 5:00 employee?

14:56:23 11 A. I was never a 9:00 to 5:00 employee. It was clear
14:56:28 12 that I had the contract. Mr. Hignite sent an e-mail to
14:56:34 13 General Lewis.

14:56:35 14 Q. Did you tell anybody back at the Guard, your
14:56:38 15 colleagues --

14:56:39 16 A. Uhm-hmm.

14:56:39 17 Q. -- that you had just been hired as a full-time ESGR
14:56:46 18 employee?

14:56:51 19 A. I did my functions -- there was no need --

14:56:55 20 Q. That's not my, that's not my question. Did you?

14:57:00 21 A. Did I tell anyone that I was on contract with ESGR
14:57:04 22 in September of 2010?

14:57:07 23 Yes, I did.

14:57:13 24 Q. And did that person or persons who you told, did
14:57:18 25 you also tell them, "And guess what? I'm also a

14:57:23 1 full-time 9:00 to 5:00 military tech employee"?

14:57:29 2 A. You asked me if I told my colleagues. I'm at work
14:57:35 3 every day. My colleagues see me at work.

14:57:40 4 Q. But some of them testified that you told them you
14:57:42 5 were volunteering.

14:57:44 6 A. People testify to a lot of things when they're
14:57:49 7 nervous about covering themselves.

14:57:52 8 Q. But you're not doing that?

14:57:54 9 A. I had no need to. I never hid my ESGR contract
14:57:59 10 responsibilities. I never hid that I was planning a
14:58:06 11 senior leadership conference --

14:58:08 12 Q. In spite of what that e-mail says?

14:58:10 13 A. -- or anything else.

14:58:11 14 Q. In spite of what that e-mail says?

14:58:13 15 A. I never hid any of my functions --

14:58:16 16 Q. In spite of what Major Morales said -- Major James
14:58:19 17 said?

14:58:20 18 A. I'll wait for you to ask me a question.

14:58:22 19 Q. Yes.

14:58:31 20 General Rivera testified that you could not hold a
14:58:42 21 full-time military tech position and also hold the ESGR
14:58:50 22 full-time position. Did you hear him testify to that?

14:58:55 23 A. I heard him give testimony to that, which is false.

14:59:01 24 Q. General Rivera, in your view, does not understand
14:59:08 25 the rules and regulations of a full-time military tech

14:59:13 1 employee of the Virgin Islands National Guard?

14:59:15 2 A. General Rivera doesn't understand a lot of things
14:59:20 3 for the V.I. National Guard. That's why he has officers
14:59:27 4 that are experts.

14:59:28 5 Q. That's fine.

14:59:29 6 General Lewis doesn't understand the rules and
14:59:34 7 regulations with respect to a full-time military tech
14:59:37 8 person assigned to the National Guard?

14:59:41 9 A. I can't answer what General Lewis understands. I
14:59:46 10 could tell you what General Rivera doesn't know, though.

14:59:49 11 Q. Okay.

15:00:07 12 Were there times in -- let's go back to September.
15:00:19 13 After you were rehired by the Guard in September of
15:00:28 14 2010, did there come a time that you were under the
15:00:31 15 supervision of Colonel Ruan?

15:00:36 16 A. In September of 2010?

15:00:39 17 Q. No. After September 2010, did there come a time?

15:00:43 18 A. January of 2011, I believe Colonel Ruan took over
15:00:50 19 as the director of joint staff.

15:00:52 20 Q. Okay. And I think he had replaced General Lewis?

15:01:00 21 A. Yes.

15:01:01 22 Q. So Ruan was now your new supervisor; isn't that
15:01:05 23 true?

15:01:05 24 A. Yes.

15:01:06 25 Q. Did you go to General -- Colonel Ruan and say,

15:01:09 1 "Colonel, I know you're just coming into this position.
15:01:14 2 You should know I am a full-time military tech person,
15:01:21 3 and I am also the full-time ESGR representative"?

15:01:27 4 Did you tell him that?

15:01:31 5 A. When anyone takes over a position --

15:01:32 6 Q. Did you tell him that? Yes or no?

15:01:34 7 A. I would hope they know who is working for them.

15:01:42 8 Q. Ah. And you're surprised that he didn't know?

15:01:49 9 A. Any position that I've taken, I know who works for
15:01:53 10 me and who doesn't.

15:02:17 11 Q. Let me show you Government's Exhibit 2.8.

15:02:57 12 MR. POTTER: I think that's in evidence, Judge.

15:03:01 13 THE WITNESS: Pardon? Oh.

15:03:04 14 MR. POTTER: Can we publish, Judge?

15:03:06 15 THE COURT: Let's find out if it's in evidence.

15:03:23 16 MR. POTTER: As well as Government's

15:03:23 17 Exhibit 6.8.

15:03:40 18 (Exhibit published.)

15:03:40 19 BY MR. POTTER:

15:03:40 20 Q. Now, Ms. Morales, 6.8 -- sorry -- 2.8 is your time
15:03:47 21 sheet for the National Guard; is that correct? For that
15:03:51 22 pay period?

15:03:51 23 A. 2.8 is on the left-hand side?

15:03:55 24 Q. Yes.

15:03:56 25 A. Correct. That is a time and attendance record

15:04:06 1 signed by Colonel Ruan.

15:04:07 2 Q. And Government's Exhibit 6.8. Tell us what 6.8 is.

15:04:15 3 A. 6.8 is a Deltek time sheet for the contract for
15:04:22 4 ESGR.

15:04:29 5 MR. POTTER: Now can we see the dates, the time
15:04:31 6 period for those documents?

15:04:31 7 BY MR. POTTER:

15:04:50 8 Q. Have you ever -- you have taken the leave from the
15:04:53 9 National Guard while at the same time you were actually
15:05:00 10 working full-time as an ESGR contract person; isn't that
15:05:06 11 true?

15:05:08 12 A. I was the ESGR contractor, yes.

15:05:14 13 Q. And as a contract person, you requested leave?

15:05:28 14 A. If I was unavailable to MPSC, yes, I submitted for
15:05:33 15 leave.

15:05:33 16 Q. As a contractor, you submitted for leave?

15:05:38 17 A. As long as I was unavailable, yes.

15:05:40 18 Q. And you submitted for leave to be asked to be
15:05:44 19 excused for any given pay period or day of the week;
15:05:49 20 isn't that true?

15:05:50 21 A. Any given time that I was unavailable, yes.

15:05:54 22 Q. So you were expected to work 8:00 to 5:00 on any
15:06:02 23 given day as a contract employee?

15:06:05 24 A. Pardon?

15:06:06 25 Q. And if you're not seeking -- if you're not going to

15:06:10 1 work, you have to ask for time off; isn't that true?

15:06:13 2 A. That's false.

15:06:15 3 MR. JUPITER: Objection.

15:06:16 4 THE COURT: Overruled.

15:06:21 5 BY MR. POTTER:

15:06:21 6 Q. That's false?

15:06:23 7 If I should say you're an independent contractor,
15:06:25 8 why do you have to go to an employee -- employer and ask
15:06:29 9 for leave?

15:06:32 10 A. Any time I was unavailable to MPSC, I ensured that
15:06:39 11 I turned in a leave slip, correct.

15:06:42 12 Q. Okay. So in 6.8, you submitted a leave slip for --
15:06:53 13 I can't see.

15:07:39 14 MR. POTTER: Court's indulgence, Your Honor?

15:07:44 15 THE COURT: Yes.

15:07:45 16 MR. POTTER: Okay. Bring up 2.8 for us,
15:07:52 17 please.

15:07:52 18 BY MR. POTTER:

15:07:53 19 Q. So you requested leave from the National Guard for
15:08:01 20 June 10th and June 11th; is that correct?

15:08:07 21 A. That is correct.

15:08:15 22 Q. And for those very same days on June 10th and
15:08:23 23 June 11th, a Thursday and a Friday, you were working for
15:08:30 24 the ESGR?

15:08:36 25 A. I need to see the entire thing.

15:09:44 1 Q. I apologize, Ms. Morales. We're trying to get this
15:09:49 2 straight.

15:09:49 3 So on the 10th and 11th of June, you worked
15:10:01 4 16 hours for the National Guard, correct?

15:10:06 5 You worked the Thursday and you worked the Friday,
15:10:08 6 correct?

15:10:08 7 A. No.

15:10:15 8 Q. You did not?

15:10:16 9 A. You showed me the National Guard time sheet, in
15:10:20 10 which I took leave for 16 hours, Mr. Potter.

15:10:23 11 Q. I apologize.

15:10:25 12 But you worked those very same days for ESGR?

15:10:30 13 A. I accounted for 16 hours on my ESGR contract, yes.

15:10:35 14 Q. You accounted for it. So it was easy for you to
15:10:46 15 submit leave to the National Guard or leave to the
15:10:55 16 ESGR -- you didn't have a supervisor, did you?

15:10:59 17 A. Pardon?

15:10:59 18 Q. You had no supervisor here in St. Croix, did you?

15:11:02 19 A. No, I did not.

15:11:03 20 Q. You had no one knowing whether or not you were
15:11:06 21 actually working or not at any given time on any given
15:11:10 22 day; is that true?

15:11:10 23 A. That was for three years.

15:11:12 24 Q. Yes.

15:11:18 25 So here you told the Guard you're not working

15:11:20 1 today -- you told ESGR, "I'm not working today," and you
15:11:24 2 told the Guard, "I am working today"?
15:11:27 3 A. That is not true. You just showed me the leave
15:11:37 4 slip from the Guard.
15:11:38 5 Q. You were not being deceptive with respect to the --
15:11:41 6 A. No, I was not.
15:11:43 7 Q. Okay.
15:11:53 8 Let me show you Government's Exhibit 2.19, and
15:12:18 9 Government's Exhibit 6.19.
15:12:47 10 Now in Government's Exhibit 2.19 you took leave.
15:12:54 11 You took leave on January 31st through February 4th; is
15:13:10 12 that correct?
15:13:13 13 A. That is correct.
15:13:15 14 Q. You took leave from the National Guard?
15:13:17 15 A. Annual leave, correct.
15:13:21 16 Q. And then let's look at what you did for MPSC.
15:13:45 17 For the very same period --
15:13:51 18 MR. JUPITER: Your Honor, I would object to
15:13:52 19 counsel just testifying as to --
15:13:56 20 THE COURT: I'm waiting for the question.
15:14:01 21 Overruled.
15:14:04 22 BY MR. POTTER:
15:14:04 23 Q. That very same workweek you worked a full week for
15:14:09 24 MPSC?
15:14:11 25 A. Mr. Potter, I think I made clear that if I worked

15:14:15 1 on a Saturday or Sunday evenings, during the week I
15:14:20 2 accounted for 40 hours, because the Deltek system does
15:14:26 3 not admit -- does not accept any time to show actual
15:14:34 4 time worked outside of 8:00 to 5:00, Monday through
15:14:39 5 Friday.

15:14:39 6 Q. So you're on the honor system?

15:14:41 7 A. Pardon?

15:14:42 8 Q. You were on the honor system with MPSC, with the
15:14:46 9 Deltek system?

15:14:49 10 A. Within 54 states and territories.

15:14:53 11 Q. Okay. But we don't all have two jobs?

15:14:56 12 A. Some of them did.

15:14:57 13 Q. At the same time?

15:14:58 14 A. Absolutely.

15:14:59 15 Q. So you're aware of other folks in your position who
15:15:05 16 were working --

15:15:07 17 THE COURT: Let's move on. That's not the
15:15:08 18 issue.

15:15:09 19 MR. POTTER: Yes, Judge.

15:15:09 20 (Pause.)

15:15:29 21 MR. POTTER: Court's indulgence, Judge?

15:15:30 22 THE COURT: Yes.

15:15:31 23 (Pause.)

15:15:31 24 BY MR. POTTER:

15:15:31 25 Q. So let me show you -- let me show you what is

15:15:49 1 marked as Government's Exhibit, I think it's 1.13. And
15:16:33 2 tell us what that is?

15:16:35 3 A. That is a direct deposit signup form for the
15:16:40 4 National Guard.

15:16:41 5 Q. You were asking the Guard to send your money
15:16:44 6 directly -- wire moneys directly into your checking
15:16:49 7 account?

15:16:49 8 A. Everyone has to be on direct deposit within the
15:16:53 9 Virgin Islands National Guard. We don't have a choice.

15:17:04 10 MR. POTTER: I may be done, Your Honor. One
15:17:07 11 second.

15:17:15 12 (Pause.)

15:17:15 13 THE COURT: Are you yielding the witness?

15:17:18 14 MR. POTTER: Yes, I might be yielding the
15:17:21 15 witness, Your Honor. One second. Court's indulgence.

15:17:35 16 (Pause.)

15:17:35 17 BY MR. POTTER:

15:17:35 18 Q. Were you eventually terminated from the National
15:17:37 19 Guard?

15:17:43 20 A. Was I terminated from the National Guard?

15:17:46 21 Q. From the National Guard.

15:17:50 22 A. When?

15:17:51 23 Q. The last time that you worked for the National
15:17:53 24 Guard --

15:17:53 25 A. Uhm-hmm.

15:17:54 1 Q. -- were you terminated?

15:17:55 2 A. I lost my military membership, and as such was
15:18:01 3 given a 30-day notice for termination, correct.

15:18:06 4 Q. And why was it that you lost your military
15:18:10 5 membership?

15:18:11 6 A. Basically they were waiting for my temporary
15:18:15 7 clearance to come through.

15:18:17 8 Q. And what happened with your temporary clearance?

15:18:20 9 A. It never --

15:18:22 10 MR. JUPITER: Objection.

15:18:23 11 THE COURT: Sustained.

15:18:27 12 MR. POTTER: I think that's all I have, Your
15:18:29 13 Honor.

15:18:29 14 THE COURT: Redirect?

15:18:37 15 REDIRECT EXAMINATION

15:18:39 16 BY MR. JUPITER:

15:18:40 17 Q. Were you approached by Colonel Ruan before you left
15:18:46 18 the Guard?

15:18:49 19 A. I was approached by Colonel Ruan before I left the
15:18:53 20 Guard, that is correct.

15:18:53 21 Q. And what was Colonel Ruan's position at that time?

15:18:56 22 A. He was the director of joint staff.

15:19:00 23 Q. And what, if anything, did Colonel Ruan offer you?

15:19:04 24 MR. POTTER: Objection, Your Honor.

15:19:05 25 THE WITNESS: He asked me if I was --

15:19:06 1 THE COURT: Hold on.

15:19:07 2 Sustained.

15:19:09 3 BY MR. JUPITER:

15:19:09 4 Q. What did -- what happened at that point?

15:19:13 5 A. Colonel Ruan approached me regarding my staying as
15:19:25 6 a --

15:19:26 7 MR. POTTER: Objection, Your Honor.

15:19:29 8 THE COURT: Overruled.

15:19:31 9 MR. JUPITER: Go ahead.

15:19:32 10 THE WITNESS: -- as a civilian technician for
15:19:34 11 the National Guard in the J5 position.

15:19:40 12 BY MR. JUPITER:

15:19:40 13 Q. So he wanted you to stay on?

15:19:42 14 A. Yes, sir.

15:19:43 15 Q. And this was in what month and in what year?

15:19:46 16 A. That was in May of 2011.

15:19:50 17 Q. And what, if anything, did you tell him?

15:19:53 18 A. I told him that I was moving to the States, and
15:20:00 19 would not stay.

15:20:01 20 Q. And why didn't you want to stay?

15:20:04 21 A. Pardon?

15:20:04 22 Q. Why didn't you want to stay?

15:20:06 23 A. I did not want to stay because I basically had

15:20:10 24 already -- after I had gotten the 30-day notice, I

15:20:14 25 basically decided I was going to move back to Arlington,

15:20:18 1 Virginia.

15:20:20 2 Q. The 30-day notice, are you allowed to appeal that?

15:20:24 3 MR. POTTER: Objection, Your Honor.

15:20:25 4 THE COURT: Sustained.

15:20:32 5 (Defendant's Exhibit 9 marked for identification.)

15:20:32 6 BY MR. JUPITER:

15:20:32 7 Q. I want to show you what I've marked as Defendant's
15:20:35 8 Exhibit 9 and see if you recognize that.

15:20:38 9 THE COURT: It's in evidence?

15:20:41 10 MR. JUPITER: No, Your Honor.

15:20:43 11 THE COURT: All right.

15:20:46 12 BY MR. JUPITER:

15:20:46 13 Q. Do you recognize that?

15:20:51 14 Without telling us the content, what is it?

15:20:53 15 A. A resume.

15:20:59 16 Q. Are you looking at the screen, Defendant's Exhibit
15:21:02 17 Number 9?

15:21:03 18 A. Yes.

15:21:04 19 Q. And what do you see?

15:21:07 20 What is the date of it?

15:21:07 21 A. Oh, sorry. It's an e-mail.

15:21:10 22 Q. Okay. And what's the date of it?

15:21:13 23 A. September 27th, 2010.

15:21:15 24 Q. Okay. And who is it from?

15:21:18 25 A. From Baron Hignite.

15:21:20 1 Q. Okay. Did you receive this e-mail?

15:21:23 2 A. Yes, I did.

15:21:24 3 Q. Okay. And did you see it on that date?

15:21:27 4 A. Yes, I did.

15:21:28 5 Q. Okay. And did you -- does it appear to be in the
15:21:35 6 same form in which you received it on that date?

15:21:39 7 A. Yes, it is.

15:21:41 8 MR. JUPITER: Your Honor, I move to admit
15:21:43 9 Defendant's Exhibit Number 9.

15:21:45 10 THE COURT: Attorney Potter?

15:21:48 11 MR. POTTER: No objection, Your Honor.

15:21:49 12 THE COURT: All right. Nine is admitted.

15:21:56 13 (Defendant's Exhibit 9 admitted into evidence.)

15:21:56 14 MR. JUPITER: I would ask to publish it.

15:22:08 15 (Exhibit published.)

15:22:08 16 BY MR. JUPITER:

15:22:09 17 Q. Okay. Can you -- you indicated that this was an
15:22:11 18 e-mail from Mr. Hignite, correct?

15:22:13 19 A. Yes.

15:22:15 20 Q. All right. Can you read on the -- in the two
15:22:18 21 column or in the cc column on the third line -- I mean
15:22:30 22 the second line of the cc, who is indicated, underlined,
15:22:34 23 there?

15:22:34 24 A. General Lewis.

15:22:37 25 Q. All right. And what does this e-mail concern?

15:22:41 1 A. It concerns Mr. Hignite announcing that I will be
15:22:46 2 back as, on as an ESGR contractor. "I am very pleased
15:22:57 3 to announce that I have..."

15:23:01 4 Q. Okay. And before you received this e-mail, did you
15:23:04 5 have a discussion with General Lewis about the ESGR --
15:23:08 6 about you going back to the ESGR position?

15:23:11 7 MR. POTTER: Objection, Your Honor --

15:23:13 8 THE WITNESS: Yes, I did.

15:23:15 9 THE COURT: Sustained.

15:23:26 10 BY MR. JUPITER:

15:23:27 11 Q. Between January and June of 2011, did Aubrey Ruan
15:23:34 12 ever confront you about having these two positions?

15:23:37 13 MR. POTTER: Objection, Your Honor.

15:23:38 14 THE WITNESS: No.

15:23:38 15 THE COURT: Sustained.

15:23:45 16 BY MR. JUPITER:

15:23:45 17 Q. What is your purpose when you -- in requesting
15:23:48 18 leave on ESGR in the Deltek system, what's your purpose
15:23:53 19 for doing that?

15:23:54 20 A. I would request leave if I know I was going to be
15:23:58 21 unavailable to accept any calls on that given day or
15:24:02 22 time.

15:24:03 23 Q. Now, on average, how many calls would you get from
15:24:07 24 military personnel?

15:24:09 25 A. From MPSC itself? From the company?

15:24:16 1 Q. Yes -- no, from the military -- from Guard members.

15:24:20 2 A. Oh, okay. Maybe three to four calls per week.

15:24:25 3 Q. And how long would those calls usually last?

15:24:28 4 A. Five to ten minutes.

15:24:31 5 Q. With regard to your -- you talked about being

15:24:34 6 unavailable. What do you mean by that?

15:24:36 7 A. It means that I'm not answering my phone.

15:24:41 8 Q. Now with regard to -- Mr. Potter asked you about

15:24:44 9 your 21 years in the military -- in the Guard prior to

15:24:53 10 2003. What was your status during those years?

15:24:57 11 A. I was military technician for 12 years, and active

15:25:00 12 duty for 8 years.

15:25:26 13 Q. Now, did Baron Hignite -- Mr. Potter asked you

15:25:32 14 about Mr. Hignite's phone call to you in September.

15:25:40 15 Were you trying to attempt to get that position, or

15:25:43 16 was he trying --

15:25:44 17 MR. POTTER: Objection, Your Honor.

15:25:44 18 THE COURT: Sustained.

15:25:56 19 MR. JUPITER: No further questions, Your Honor.

15:25:57 20 THE COURT: Ms. Morales, thank you for your

15:26:01 21 testimony.

15:26:01 22 You may step down.

15:26:01 23 (Witness withdrew from stand.)

15:26:04 24 THE COURT: Next witness.

15:26:06 25 MR. JUPITER: Your Honor, subject to our

15:26:07 1 exhibits, we rest. Subject to our --

15:26:11 2 THE COURT: Put Number 8 on again for me,
15:26:14 3 please.

15:26:21 4 MR. JUPITER: Three-page document.

15:26:36 5 THE COURT: The second again.

15:26:42 6 The third.

15:26:58 7 All right. Thank you.

15:26:59 8 Ladies and gentlemen, defense rests. That means
15:27:00 9 that all the evidence in this case is now before you.

15:27:03 10 There's a brief matter I need to tend to at
15:27:06 11 sidebar, then we'll resume.

15:27:08 12 Counsel?

15:27:22 13 (Sidebar discussion held as follows:)

15:27:26 14 THE COURT: Okay. What's the government's
15:27:28 15 problem with Eight?

15:27:31 16 MR. POTTER: This is the first time I ever saw
15:27:32 17 it, so I didn't even know --

15:27:34 18 THE COURT: That's not necessarily
15:27:36 19 objectionable. It seems like all of the statements were
15:27:39 20 from people aligned with the United States: Linda
15:27:45 21 Cills, I can't remember who else. But there wasn't a
15:27:48 22 statement from someone else -- can you get the document,
15:27:53 23 Attorney Jupiter, please?

15:27:55 24 MR. JUPITER: Yes, Your Honor.

15:28:16 25 THE COURT: Don't put it on the microphone.

15:28:41 1 MR. POTTER: I have no objection. It's fine.

15:28:43 2 THE COURT: Okay. It's admitted.

15:28:43 3 (Defendant's Exhibit 8 admitted into evidence.)

15:28:43 4 RULE 29 MOTION BY THE DEFENDANT

15:28:45 5 THE COURT: You want to be heard, Attorney
15:28:47 6 Jupiter?

15:28:48 7 MR. JUPITER: Yes, Your Honor. We renew our
15:28:49 8 motion for Rule 29 judgment of acquittal, for the same
15:28:53 9 reasons.

15:28:53 10 THE COURT: Same ruling.

15:28:54 11 All right. We're going to have a charging
15:28:57 12 conference in chambers right now, and I'll charge them
15:28:59 13 up and we'll deal with the other logistics. Okay?

15:29:04 14 (End sidebar discussion, open court as follows:)

15:29:10 15 THE COURT: Ladies and gentlemen, we need to
15:29:11 16 take a break. It's time for your afternoon break,
15:29:14 17 anyway. So this will be for about 20 minutes, and then
15:29:18 18 we'll resume. All right.

15:30:01 19 (Jury out.)

15:30:04 20 THE COURT: Okay. I'll see counsel in
15:30:06 21 chambers.

15:30:08 22 (Court in recess, 3:30 p.m.)

16:15:18 23 (After recess, 4:15 p.m., jury present.)

16:15:20 24 THE COURT: Good afternoon again, ladies and
16:15:20 25 gentlemen.

JURY INSTRUCTIONS BY THE COURT

THE COURT: Let me first thank you. The Court appreciates the services that you have rendered as jurors in this case, as does counsel and as does the United States.

You've been most cooperative, patient and attentive to these proceedings, and have been courteous to counsel and to the Court, and for this we are indeed grateful.

Under our system of justice the Court, represented by me as judge, and you, the jury, have different jobs in a case such as this.

I'm responsible for safeguarding both the rights of the defendant and the interests of the public in the administration of criminal justice. I preside over the trial, to make sure it is conducted in accordance with well-established principles and rules of law.

I decide questions of law as they arise in the trial.

I also charge or instruct the jury on the law that applies to the case, as I'm doing right now.

Regarding the facts, on the other hand, you and you alone are the sole judges of the facts. I do not decide the facts and you do not decide questions of law.

I want you to consider these instructions as a whole, and not emphasize one section over another. That

16:16:22 1 is, do not place too much emphasis on any one section.

16:16:26 2 Read all sections together.

16:16:27 3 You must ignore any contrary interpretation of the
16:16:31 4 law that you may have heard in other cases.

16:16:33 5 Just as it is my job to instruct you on the law
16:16:36 6 that governs this case, you must accept and follow these
16:16:39 7 instructions. As the judges of the facts, you may not
16:16:42 8 be concerned with the wisdom of any of these rules of
16:16:44 9 law I am stating to you.

16:16:47 10 Regardless of any opinion you may have on what the
16:16:49 11 law ought to be, to base a verdict upon any view of the
16:16:53 12 law other than what I instruct you would be a violation
16:16:55 13 of your sworn duty.

16:16:57 14 Questions, objections, statements, arguments and
16:17:01 15 statements of counsel incorporated in a question are not
16:17:04 16 evidence in this case.

16:17:05 17 You must entirely disregard any proposed testimony
16:17:08 18 or any proposed exhibit which I did not admit, and any
16:17:12 19 testimony or exhibit I ordered to be stricken from the
16:17:14 20 record.

16:17:14 21 You must also disregard anything you may have seen
16:17:17 22 or heard outside the courtroom.

16:17:18 23 Also remember that the defendant is not on trial
16:17:21 24 for any act or any conduct not specifically charged in
16:17:24 25 the indictment.

16:17:25 1 In your deliberations, you may consider only the
16:17:27 2 offenses charged against the defendant in the
16:17:29 3 indictment.

16:17:31 4 Evidence may be direct or circumstantial. Direct
16:17:35 5 evidence directly proves a fact, such as testimony of an
16:17:38 6 eyewitness.

16:17:39 7 Circumstantial evidence indirectly proves a fact by
16:17:43 8 establishing a chain of facts from which you can find
16:17:45 9 that another fact exists.

16:17:46 10 From one or more facts you find have been proved
16:17:48 11 you can use your reason, experience and common sense to
16:17:51 12 infer that some other fact exists and has been proved.

16:17:54 13 You may infer a fact, that is, draw a deduction or
16:17:57 14 a conclusion from the facts that you find have been
16:18:00 15 established by either direct evidence, or even other
16:18:04 16 circumstantial evidence.

16:18:05 17 This process of drawing inferences from facts in
16:18:08 18 evidence is not a matter of guesswork or speculation.
16:18:11 19 I'll give you a simple example to illustrate the point.

16:18:16 20 You're sitting in court. You cannot see outside.
16:18:18 21 When you came in this morning, assume it was a sunny
16:18:20 22 day. And assume that someone just walked in the door
16:18:23 23 with an umbrella that was wet and a raincoat that was
16:18:26 24 dripping. From such circumstantial evidence, you could
16:18:28 25 infer and conclude that it was now raining outside.

16:18:32 1 The government can rely entirely on circumstantial
16:18:34 2 evidence to prove the elements of any of the crimes
16:18:37 3 charged in the indictment.

16:18:38 4 You are to consider both kinds of evidence, direct
16:18:41 5 and circumstantial. The law permits you to give equal
16:18:46 6 weight to both. But it is for you to decide how much
16:18:48 7 weight to give to any evidence.

16:18:50 8 The indictment is but a formal method of accusing a
16:18:53 9 defendant of a crime. It is not evidence of any kind
16:18:56 10 against the accused. It may not be considered by you as
16:18:59 11 any evidence of the guilt of the defendant, Sherrymae
16:19:02 12 Morales.

16:19:03 13 By her plea of not guilty, the defendant denies
16:19:06 14 that she is guilty of the charges in this indictment.

16:19:09 15 There is nothing particularly different in the way
16:19:13 16 a juror should consider the evidence in a trial from
16:19:15 17 that in which any reasonable and careful person would
16:19:18 18 treat any very important question that you must be -- or
16:19:21 19 that you must consider, that is received by examining
16:19:24 20 facts and evidence.

16:19:26 21 You are expected to use your good sense in
16:19:28 22 considering and evaluating the evidence in the case for
16:19:31 23 only those purposes for which it has been admitted, and
16:19:33 24 to give such evidence a reasonable and fair construction
16:19:37 25 in the light of your common knowledge of the natural

16:19:40 1 tendencies and inclinations of human beings.

16:19:43 2 If the government proves the defendant is guilty
16:19:46 3 beyond a reasonable doubt, say so. If the government
16:19:48 4 fails to prove the defendant is guilty beyond a
16:19:50 5 reasonable doubt, say so.

16:19:51 6 An important part of your job will be making
16:19:55 7 judgments about the testimony of the witnesses who
16:19:57 8 testified in this case. You should decide whether you
16:20:00 9 believe what each person had to say and how important
16:20:02 10 that testimony was.

16:20:03 11 In making that decision, I suggest that you ask
16:20:06 12 yourselves a few questions:

16:20:08 13 Did the person impress you as honest?

16:20:10 14 Did the person have any particular reason not to
16:20:12 15 tell the truth?

16:20:13 16 Did the witness have a good memory?

16:20:16 17 Did the witness have the opportunity and ability to
16:20:18 18 observe accurately the things the witness testified
16:20:22 19 about?

16:20:23 20 Did the witness appear to understand the questions
16:20:26 21 clearly and answer them directly?

16:20:28 22 Did a witness's testimony differ from the testimony
16:20:30 23 of other witnesses?

16:20:33 24 These are but a few of the considerations that will
16:20:35 25 help you determine the accuracy of what each witness

16:20:37 1 said.

16:20:37 2 The testimony of a witness may be discredited or,
16:20:42 3 as we sometimes say, impeached, by showing that the
16:20:45 4 witness previously made statements which are different
16:20:47 5 than or inconsistent with the witness's testimony here
16:20:49 6 in court.

16:20:50 7 The earlier inconsistent or contradictory
16:20:53 8 statements are admissible only to discredit or impeach
16:20:56 9 the credibility of the witness, and not to establish the
16:20:59 10 truth of these earlier statements made somewhere other
16:21:01 11 than here during the trial.

16:21:04 12 If you find that a witness knowingly testified
16:21:06 13 falsely about any important or material matter, you may
16:21:09 14 distrust the witness's testimony about other matters.
16:21:12 15 You may reject all of the testimony of that witness or
16:21:15 16 give it such weight or credibility that you conclude it
16:21:18 17 deserves.

16:21:19 18 In making up your minds in reaching a verdict, do
16:21:21 19 not make any decisions simply because there were more
16:21:24 20 witnesses on one side than the other.

16:21:26 21 You must treat all witnesses alike. That is, do
16:21:28 22 not give greater consideration to a government witness
16:21:31 23 than to a defense witness.

16:21:34 24 Your job is to think about the testimony of each
16:21:36 25 witness you heard and decide how much you believe of

16:21:38 1 what the witness had to say.

16:21:41 2 You've heard the testimony of law enforcement
16:21:43 3 officials, at least one. The fact that a witness may be
16:21:48 4 employed by the government as a law enforcement official
16:21:50 5 does not mean that her testimony is necessarily
16:21:52 6 deserving of more or less consideration or greater or
16:21:57 7 lesser weight than that of an ordinary witness.

16:22:00 8 At the same time, it is quite legitimate for
16:22:04 9 defense counsel to try to attack the credibility of a
16:22:06 10 law enforcement witness on the ground that the law
16:22:09 11 enforcement witness's testimony may be covered by --
16:22:12 12 colored, rather, by a personal or professional interest
16:22:15 13 in the outcome of the trial.

16:22:17 14 It is your decision, after reviewing all the
16:22:20 15 evidence, whether to accept the testimony of the law
16:22:23 16 enforcement witness and to give to that testimony
16:22:25 17 whatever weight, if any, you find it deserves.

16:22:29 18 The defendant chose to testify in this case. The
16:22:32 19 law permits a defendant to testify on her own behalf.
16:22:36 20 As with the testimony of any witness, you must determine
16:22:39 21 to what extent the testimony of the defendant is
16:22:42 22 credible. The defendant's testimony is to be judged the
16:22:44 23 same as that of any other witness.

16:22:47 24 As I mentioned before trial, the defendant is
16:22:49 25 presumed to be innocent until proved to be guilty. Thus

16:22:53 1 the defendant, although charged by indictment, begins
16:22:55 2 the trial with no evidence against her.

16:22:57 3 This presumption of innocence continues until
16:23:00 4 overcome by evidence that establishes guilt to your
16:23:02 5 satisfaction beyond a reasonable doubt.

16:23:05 6 The burden of proving beyond a reasonable doubt
16:23:07 7 each and every essential element of the crimes charged
16:23:10 8 is upon the government and always upon the government.
16:23:13 9 That burden never shifts, but rests upon the government
16:23:16 10 throughout the entire case.

16:23:17 11 A defendant never has to prove her lack of guilt.
16:23:20 12 The law never imposes upon a defendant the burden or
16:23:23 13 duty of calling any witnesses or producing any evidence.

16:23:27 14 If you have a reasonable doubt about whether the
16:23:29 15 defendant is guilty, you must find the defendant not
16:23:34 16 guilty.

16:23:34 17 The defendant is charged with several offenses.
16:23:36 18 Each offense is charged in a separate count of the
16:23:40 19 indictment. The number of offenses charged are not
16:23:42 20 evidence of guilt and they should not influence your
16:23:45 21 decision in any way.

16:23:46 22 You must separately consider the evidence that
16:23:48 23 relates to each offense, and you must return a separate
16:23:51 24 verdict for each offense.

16:23:53 25 For each offense charged, you must decide whether

16:23:55 1 the government has proved beyond a reasonable doubt that
16:23:57 2 the defendant is guilty of that particular offense.

16:24:00 3 Your decision on one offense, whether guilty or not
16:24:03 4 guilty, should not influence your decision on any of the
16:24:06 5 other offenses charged. Each offense should be
16:24:09 6 considered separately.

16:24:11 7 "Reasonable doubt" is a term often used, probably
16:24:14 8 well understood, but not easily defined. Reasonable
16:24:16 9 doubt is what the term implies. A reasonable doubt is a
16:24:19 10 fair doubt, based upon reason and common sense.

16:24:22 11 The government's evidence must be proof of such a
16:24:24 12 convincing character that you would be willing to rely
16:24:27 13 and act upon it unhesitatingly in the most important of
16:24:31 14 your own affairs.

16:24:32 15 The doubt must be reasonable. It is not a mere
16:24:34 16 possible or imaginary doubt. Because as you well know,
16:24:37 17 everything relating to human affairs and depending on
16:24:40 18 oral testimony is open to some possible or imaginary
16:24:44 19 doubt.

16:24:45 20 The government is not required to produce evidence
16:24:47 21 that will exclude every possibility of the defendant's
16:24:51 22 innocence. It is only required to prove a defendant's
16:24:54 23 guilt beyond a reasonable doubt, not beyond all possible
16:25:00 24 doubt. The test is one of reasonable doubt.

16:25:01 25 The defendant is never to be convicted on mere

16:25:04 1 speculation, suspicion or conjecture or, indeed, on
16:25:07 2 proof that is less than beyond a reasonable doubt.

16:25:09 3 Reasonable doubt may arise from a lack of credible
16:25:12 4 evidence or proof. If you find that the government has
16:25:16 5 failed to produce evidence sufficient to satisfy you of
16:25:18 6 the guilt of the defendant beyond a reasonable doubt,
16:25:21 7 then that defendant is entitled to an acquittal or a
16:25:24 8 verdict of not guilty.

16:25:26 9 But if, after considering all of the evidence and
16:25:29 10 giving the accused the benefit of a reasonable doubt,
16:25:31 11 you are led to the conclusion that a defendant is
16:25:34 12 guilty, you should so declare by your verdict.

16:25:39 13 The crimes charged in this case are serious crimes,
16:25:41 14 which require proof of the defendant's mental state or
16:25:43 15 intent before the defendant can be convicted.

16:25:45 16 To establish mental state or intent, the government
16:25:47 17 must prove that the defendant's actions were knowingly
16:25:51 18 and intentionally done.

16:25:51 19 The government is not required to prove that the
16:25:54 20 defendant knew that she was breaking the law when she
16:25:56 21 did the acts charged in the indictment.

16:25:58 22 You may determine her mental state or intent from
16:26:01 23 all the facts and circumstances surrounding the case.

16:26:04 24 State of mind or knowledge ordinarily may only be
16:26:07 25 proved indirectly, that is, by circumstantial evidence,

16:26:11 1 because there's no way we can get inside to observe the
16:26:15 2 operations of the human mind.

16:26:17 3 While witnesses may be able to give direct evidence
16:26:19 4 of what the defendant said or did or failed to say or
16:26:22 5 do, there can be no eyewitness account of the state of a
16:26:25 6 person's mind at the time an act was done. But what a
16:26:28 7 person does, says, or fails to say or do, may indicate
16:26:32 8 the state of mind in which the person did the act.

16:26:34 9 Although you're not required to do so, you may
16:26:36 10 reasonably infer that a person ordinarily intends the
16:26:39 11 natural and probable consequences of his or her own
16:26:41 12 knowing and conscious acts.

16:26:45 13 As the judges of the facts, you may draw the
16:26:46 14 inference that a defendant knew and intended all the
16:26:49 15 consequences which someone in similar circumstances and
16:26:52 16 having the same or similar knowledge should reasonably
16:26:55 17 have expected to result from their intentional act or
16:26:58 18 conscious omission.

16:27:00 19 You can consider any such inference in determining
16:27:03 20 whether the government has proved beyond a reasonable
16:27:08 21 doubt that the defendant possessed the required criminal
16:27:09 22 intent or state of mind.

16:27:10 23 Unless otherwise instructed, in determining the
16:27:13 24 issue of state of mind of the defendant you may consider
16:27:16 25 any statements made and acts done by her, as well as

16:27:19 1 other facts, inferences and circumstances in evidence
16:27:23 2 which indicate the defendant's state of mind or intent.

16:27:27 3 The term "knowingly" as used in these instructions
16:27:31 4 describes the state of mind of the defendant. It means
16:27:33 5 that the defendant was conscious and aware of the
16:27:34 6 defendant's actions. Whether or not a defendant has
16:27:38 7 this knowledge is a question of fact to be determined by
16:27:40 8 you on the basis of all the evidence.

16:27:43 9 An act is done knowingly only if it is done
16:27:45 10 purposely and deliberately, and not because of accident,
16:27:48 11 mistake, negligence or other innocent reason.

16:27:51 12 You can consider any statements made and acts done
16:27:54 13 or omitted by a defendant, as well as other facts,
16:27:58 14 inferences and circumstances in evidence which indicate
16:28:00 15 the defendant acted knowingly.

16:28:03 16 The term "intentionally" is used in these
16:28:05 17 instructions and describes the state of mind of the
16:28:09 18 defendant, either that, one, it was defendant's
16:28:12 19 conscious desire or purpose to act in a certain way or
16:28:15 20 to cause a certain result, or that, two, the defendant
16:28:19 21 knew that she was acting in that way or would be
16:28:21 22 practically certain to cause that result.

16:28:24 23 You can consider any statements made and acts done
16:28:26 24 or omitted by a defendant, as well as other facts,
16:28:29 25 inferences and circumstances in evidence, which indicate

16:28:34 1 the defendant acted knowingly.

16:28:35 2 The defendant is charged with crimes labeled in the
16:28:39 3 indictment and described in these instructions. The
16:28:40 4 defendant is not on trial for any other act or any other
16:28:44 5 conduct.

16:28:44 6 In determining whether the government has met its
16:28:47 7 burden of proving the defendant guilty beyond a
16:28:55 8 reasonable doubt, you are to consider only the offenses
16:28:57 9 charged.

16:28:57 10 In assisting you in your determination I will
16:29:00 11 instruct you on the elements of the offense charged, or
16:29:05 12 several offenses charged.

16:29:12 13 Count 1 and Count 2 each charge the defendant with
16:29:15 14 theft of a program receiving federal funds, which is a
16:29:18 15 violation of federal law.

16:29:19 16 In order to find the defendant guilty of this
16:29:22 17 offense, you must find the government proved each of the
16:29:25 18 following elements beyond a reasonable doubt:

16:29:27 19 First, that at the time alleged in the indictment
16:29:30 20 the defendant was an agent of the Virgin Islands
16:29:33 21 National Guard.

16:29:34 22 Second, that in a one-year period the Virgin
16:29:38 23 Islands National Guard received federal benefits in
16:29:40 24 excess of \$10,000.

16:29:41 25 Third, that the defendant stole, embezzled,

16:29:44 1 obtained by fraud, or knowingly converted property.

16:29:49 2 Fourth, that the property stolen, embezzled,
16:29:51 3 obtained by fraud or knowingly converted was in the
16:29:54 4 care, custody or control of the Virgin Islands National
16:29:57 5 Guard.

16:29:58 6 and fifth, that the value of the property stolen,
16:30:02 7 embezzled, obtained by fraud or knowingly converted was
16:30:04 8 at least \$5,000.

16:30:06 9 If you are convinced that each element has been
16:30:10 10 proven beyond a reasonable doubt with respect to a
16:30:11 11 specific count, then it is your duty to return a verdict
16:30:14 12 of not -- I'm sorry -- return a verdict of guilty as to
16:30:18 13 the defendant on that count.

16:30:19 14 However, if you have a reasonable doubt as to any
16:30:22 15 of these elements with respect to a particular count,
16:30:27 16 then it is your duty to return a verdict of not guilty
16:30:30 17 as to the defendant on that count.

16:30:36 18 An agent is a person authorized to act on behalf of
16:30:37 19 another person, organization or government. Employees,
16:30:39 20 partners, directors, officers, managers and
16:30:41 21 representatives are all agents of the organization with
16:30:45 22 which they are associated.

16:30:47 23 An agent does not necessarily have any control over
16:30:49 24 the federal funds received by the organization.

16:30:52 25 To prove that the Virgin Islands National Guard

16:30:54 1 received federal funds, the government must establish
16:30:57 2 that the Virgin Islands National Guard received during a
16:31:00 3 one-year period benefits in excess of \$10,000 under a
16:31:04 4 federal program involving a grant, contract, subsidy,
16:31:09 5 loan, guaranty, insurance, or some other form of federal
16:31:12 6 assistance.

16:31:12 7 If some of the funds paid to the Virgin Islands
16:31:15 8 National Guard originated with the Federal Government
16:31:18 9 and some from the State Government, it is for you to
16:31:21 10 decide which were federal benefits, and that those
16:31:23 11 federal benefits were in excess of \$10,000.

16:31:28 12 The government does not have to prove that the
16:31:30 13 property stolen, embezzled, obtained by fraud or
16:31:33 14 knowingly converted by the defendant was received by the
16:31:36 15 Virgin Islands National Guard as federal benefits or
16:31:38 16 derived from federal benefits received by the Virgin
16:31:42 17 Islands National Guard.

16:31:45 18 What the government must prove beyond a reasonable
16:31:47 19 doubt is that the defendant stole, embezzled, obtained
16:31:51 20 by fraud or knowingly converted from the Virgin Islands
16:31:53 21 National Guard at the same time that the Virgin Islands
16:31:55 22 National Guard received federal benefits in excess of
16:31:59 23 \$10,000 during a one-year period.

16:32:03 24 In other words, the government does not need to
16:32:05 25 establish a connection between the criminal activity and

16:32:07 1 the federal funds.

16:32:09 2 The one-year period must begin no more than
16:32:13 3 12 months before the defendant began committing the
16:32:15 4 offense, and must end no more than 12 months after the
16:32:18 5 defendant stopped committing the offense. The one-year
16:32:22 6 period may include time both before and after the
16:32:24 7 commission of the offense.

16:32:25 8 To steal money or property is to take someone
16:32:29 9 else's money or property without the owner's consent,
16:32:42 10 and with the intent to deprive the owner of that money
16:32:45 11 or property.

16:32:46 12 To embezzle money means to intentionally take or
16:32:49 13 convert to one's own use the property of another, after
16:32:53 14 that money or property lawfully came into the possession
16:32:57 15 of the person taking it by virtue of some office,
16:32:58 16 employment or position of trust.

16:32:59 17 To obtain by fraud means to intentionally take
16:33:02 18 something by false representation, suppression of the
16:33:04 19 truth or deliberate disregard for the truth.

16:33:06 20 To knowingly convert money or property means to
16:33:13 21 knowingly appropriate or use such money or property
16:33:16 22 without proper authority for the benefit of one's self
16:33:19 23 or any other person who was not the rightful owner, with
16:33:23 24 the intent to deprive the rightful owner of the money or
16:33:26 25 property.

16:33:27 1 You must agree unanimously on at least one of the
16:33:30 2 alternative illegitimate ways in which the defendant
16:33:34 3 obtained the funds.

16:33:38 4 The term "care, custody and control" means the
16:33:41 5 organization had control over and responsibility for the
16:33:44 6 property.

16:34:00 7 Value of the property stolen, embezzled, obtained
16:34:03 8 by fraud or knowingly converted by the defendant does
16:34:05 9 not include legitimate salary, wages, fees or other
16:34:08 10 compensation paid or expenses paid or reimbursed in the
16:34:12 11 ordinary course of business.

16:34:13 12 If you find that the defendant devised a scheme or
16:34:22 13 plan to steal, embezzle, obtain by fraud, or knowingly
16:34:25 14 convert money or property from the Virgin Islands
16:34:30 15 National Guard on a recurring basis through a series of
16:34:33 16 acts, you may aggregate or add up the value of the
16:34:35 17 property obtained from this series of acts by the
16:34:38 18 defendant to meet this \$5,000 requirement, so long as
16:34:43 19 those acts occur within the same one-year time period.

16:34:55 20 Counts 3 through 36 each charge that the defendant
16:34:57 21 committed wire fraud, which is a violation of federal
16:34:59 22 law.

16:35:00 23 In order to find the defendant guilty of this
16:35:02 24 offense, you must find that the government proved each
16:35:05 25 of the following elements beyond a reasonable doubt:

16:35:07 1 First, that the defendant devised a scheme to
16:35:09 2 defraud or to obtain money or property by materially
16:35:13 3 false or fraudulent pretenses, representations or
16:35:17 4 promises from the Virgin Islands National Guard.

16:35:20 5 Second, that the defendant acted with the intent to
16:35:24 6 defraud.

16:35:24 7 And third, that in advancing, furthering or
16:35:27 8 carrying out the scheme, the defendant transmitted in
16:35:30 9 writing, signal or sound, by means of a wire, radio or
16:35:33 10 telephone communication in interstate commerce, or
16:35:36 11 caused the transmission of any writing, signal or sound
16:35:39 12 of some kind by means of a wire, radio or television
16:35:43 13 communication in interstate commerce.

16:35:45 14 If you're convinced that each element has been
16:35:48 15 proven beyond a reasonable doubt with respect to a
16:35:52 16 specific count, then it is your duty to return a verdict
16:35:55 17 of guilty as to the defendant on that count.

16:35:57 18 However, if you have a reasonable doubt as to any
16:36:03 19 of these elements with respect to a particular count,
16:36:05 20 then it is your duty to return a verdict of not guilty
16:36:07 21 as to the defendant on that count.

16:36:11 22 The first element that the government must prove
16:36:13 23 beyond a reasonable doubt is that the defendant
16:36:15 24 knowingly devised or willfully participated in a scheme
16:36:17 25 to obtain money or property by materially false or

16:36:21 1 fraudulent pretenses, representations or promises.

16:36:25 2 A scheme is merely a plan for accomplishing an
16:36:30 3 object.

16:36:30 4 "Fraud" is a general term which embraces all the
16:36:34 5 various means by which one person can gain an advantage
16:36:36 6 over another by false representations, suppression of
16:36:39 7 the truth or deliberate disregard for the truth.

16:36:42 8 Thus, a scheme to defraud is any plan, device or
16:36:48 9 cause of action to deprive another of money or property
16:36:50 10 by means of false or fraudulent pretenses,
16:36:53 11 representations or promises, reasonably calculated to
16:36:57 12 deceive persons of average prudence.

16:37:00 13 A statement, representation, claim or document is
16:37:03 14 false if it is untrue when made, and if the person
16:37:07 15 making the statement, representation, claim or document
16:37:09 16 or causing it to be made knew it was untrue at the time
16:37:13 17 it was made.

16:37:17 18 The deception need not be premised upon spoken or
16:37:20 19 written words alone. If there's deception, the manner
16:37:22 20 in which it is accomplished is immaterial.

16:37:36 21 The false or fraudulent representation must relate
16:37:38 22 to a material fact or matter.

16:37:40 23 A material fact is one which would reasonably be
16:37:41 24 expected to be of concern to a reasonable and prudent
16:37:43 25 person in relying upon the representations or statements

16:37:46 1 in making the decision.

16:37:47 2 This means that if you find that a particular
16:37:51 3 statement of fact was false, you must determine whether
16:37:53 4 that statement was one that a reasonable person might
16:37:55 5 have considered important in making his or her decision.

16:38:00 6 The same principle applies to fraudulent
16:38:03 7 half-truths or omissions of material facts. You cannot
16:38:06 8 convict the defendant unless all of you agree to at
16:38:11 9 least one of the material representations.

16:38:13 10 In order to establish a scheme to defraud, the
16:38:15 11 government must prove -- must also prove that the
16:38:18 12 alleged scheme contemplated depriving another of money
16:38:21 13 or property.

16:38:21 14 However, the government is not required to prove
16:38:23 15 that the defendant originated the scheme to obtain money
16:38:26 16 or property.

16:38:27 17 Furthermore, it is not necessary that the
16:38:29 18 government prove that the defendant actually realized
16:38:32 19 any gain from the scheme, or that any intended victim
16:38:36 20 actually suffered any loss.

16:38:39 21 The phrase "transmits by means of wire, radio or
16:38:44 22 television communication in interstate commerce" means
16:38:47 23 to send from one state to another by means of telephone
16:38:50 24 or telegraph lines or by means of radio or television.
16:38:54 25 The phrase includes a telephone conversation by a person

16:38:57 1 in one state with a person in another state, or
16:39:00 2 electronic signal sent from one state to another, such
16:39:04 3 as by fax or financial wire.

16:39:06 4 You are instructed that the term "state" includes
16:39:09 5 the U.S. Virgin Islands.

16:39:10 6 The use of the Internet to send a message, such as
16:39:13 7 an e-mail or to communicate with a website, may
16:39:16 8 constitute a wire transmission in interstate commerce.

16:39:19 9 The government is not required to prove that the
16:39:21 10 defendant actually used a wire communication in
16:39:23 11 interstate commerce, or that the defendant even intended
16:39:26 12 that anything be transmitted in interstate commerce by
16:39:30 13 means of a wire, radio or telephone communication, to
16:39:33 14 further or to advance or to carry out the scheme or plan
16:39:36 15 for obtaining money or property by means of false or
16:39:39 16 fraudulent pretenses, representations or promises.

16:39:42 17 However, the government must prove beyond a
16:39:45 18 reasonable doubt that a transmission by a wire, radio or
16:39:48 19 a television communication facility, in interstate
16:39:53 20 commerce, was in fact used in some manner to further or
16:39:55 21 to advance or to carry out the scheme to obtain money or
16:39:58 22 property.

16:39:59 23 The government must also prove either that the
16:40:02 24 defendant used wire, radio or television communication
16:40:05 25 in interstate commerce, or that the defendant knew the

16:40:08 1 use of the wire, radio or television communication in
16:40:11 2 interstate commerce would follow in the ordinary course
16:40:15 3 of business or events, or that the defendant should
16:40:17 4 reasonably have anticipated that wire, radio or
16:40:21 5 telephone communication in interstate commerce would be
16:40:23 6 used.

16:40:23 7 It is not necessary that the information
16:40:26 8 transmitted by the means of wire, radio or television
16:40:30 9 communication in interstate commerce itself was false or
16:40:32 10 fraudulent or contained any false or fraudulent
16:40:36 11 pretense, representation or promise, or contained any
16:40:38 12 request for money or thing of value.

16:40:40 13 However, the government must prove beyond a
16:40:43 14 reasonable doubt that the use of the wire, radio or
16:40:45 15 television communication in interstate commerce
16:40:49 16 furthered or advanced or carried out in some way the
16:40:52 17 scheme.

16:40:53 18 The term "intend to defraud" means knowingly and
16:40:56 19 with the intention or the purpose to deceive or to
16:41:00 20 cheat.

16:41:00 21 Each transmission by wire communication in
16:41:03 22 interstate commerce to advance or to further or to carry
16:41:05 23 out the scheme or plan may be a separate violation of
16:41:08 24 the wire fraud statute.

16:41:11 25 All right. We'll now have the closing argument.

16:41:13 1 We'll begin with the government.

16:41:15 2 Attorney Potter?

16:41:16 3 MR. POTTER: Thank you, Your Honor.

16:41:30 4 CLOSING ARGUMENT BY THE GOVERNMENT

16:41:30 5 MR. POTTER: Good afternoon.

16:41:31 6 When I began and started speaking to you
16:41:38 7 yesterday -- it seems longer than yesterday, but it was
16:41:43 8 yesterday -- I began by saying this is a case about
16:41:46 9 deceit and it's a case about greed.

16:41:55 10 And I think -- or I know that the evidence that we
16:41:58 11 presented to you over the past day and a half
16:42:02 12 establishes that fact.

16:42:10 13 The defendant, by all means is a very intelligent,
16:42:12 14 very smart young lady who possesses very good skills,
16:42:20 15 and who came to work at the National Guard, and she
16:42:27 16 worked in the National Guard for 20 years, HRO manager,
16:42:36 17 very, very sophisticated positions that she had with the
16:42:39 18 National Guard.

16:42:40 19 In 2007 she started working for the MPSC, Military
16:42:52 20 Services Personnel Corp. And in that position she was
16:42:54 21 the ESGR. And for three years she held that position,
16:42:58 22 until in 2010, when she started working full-time for
16:43:03 23 the National Guard.

16:43:05 24 So for those three years the employees and
16:43:11 25 management of the National Guard were used to seeing her

16:43:13 1 in this position and performing this function.

16:43:21 2 In 2010, the testimony was the defendant wanted to
16:43:26 3 come back to the National Guard. And in coming back to
16:43:32 4 the National Guard, she was told: Well, you can't come
16:43:34 5 back to the National Guard full-time and keep your other
16:43:37 6 full-time job. You have to give up one.

16:43:41 7 She did not.

16:43:46 8 The -- the government charged the defendant with
16:43:52 9 theft from program funds. Those funds would be funds
16:43:56 10 from the National Guard.

16:43:57 11 We have to show you five things to meet our burden.

16:44:03 12 One, that she was an employee of the National
16:44:08 13 Guard, which she was. There's no dispute there.

16:44:16 14 That the National Guard receives more than \$10,000
16:44:18 15 in any one given calendar year. Well, that's easy, too,
16:44:24 16 because you heard testimony from Renaldo Rivera that the
16:44:30 17 National Guard receives approximately \$45 million in any
16:44:34 18 one given year.

16:44:38 19 And we have to show that the defendant obtained
16:44:43 20 moneys from the National Guard by fraud, that the money
16:44:49 21 was Virgin Islands National Guard money, which again
16:44:53 22 there's no disputing that.

16:44:59 23 And that she deceived more -- or defrauded more
16:45:01 24 than \$5,000 from the Guard.

16:45:03 25 I think you heard that of the wages that the

16:45:05 1 National Guard paid her was something like \$89,000. In
16:45:12 2 addition to that, there were severance moneys. And the
16:45:14 3 total, I think, was approximately \$150,000.

16:45:25 4 The fraud. When the defendant started working for
16:45:31 5 the National Guard, she attempted to deceive; and when
16:45:39 6 you heard her MPSC manager testify that: We would not
16:45:44 7 hire her if we knew she had a full-time position
16:45:50 8 anywhere else.

16:45:56 9 You heard General Lewis testify that: When she
16:45:58 10 came back to the Guard, she told me she wanted to keep
16:46:02 11 both jobs, because she thought she could do both of
16:46:06 12 them.

16:46:06 13 And he told her: You crazy. You can't keep both
16:46:11 14 jobs. You can't work two jobs in a 40-hour week. You
16:46:16 15 can't get paid 80 hours for a 40-hour week.

16:46:28 16 But that's what the defendant intended to do.

16:46:30 17 We saw the e-mail that Colonel Cills sent to the
16:46:37 18 defendant. I'll put it up. I think that's Government's
16:46:47 19 Exhibit 10.

16:46:47 20 And in that e-mail Colonel Cills says to Morales,
16:46:53 21 "I know you are no longer the ESGR coordinator."

16:47:00 22 But how did she know that?

16:47:03 23 She knew that because she knew that Morales had
16:47:06 24 been hired as a full-time military tech person.

16:47:11 25 But after sending that e-mail, it confirmed,

16:47:15 1 because Morales didn't e-mail back and say: What are
16:47:20 2 you talking about? I'm still working here full-time for
16:47:25 3 the ESGR. They hired me as the military tech person --
16:47:31 4 MR. JUPITER: Objection as to admission.
16:47:32 5 THE COURT: Okay. Overruled.
16:47:38 6 MR. POTTER: -- but I'm still here.
16:47:40 7 Cills thought she had resigned the MPSC position.
16:47:45 8 In responding to Cills's e-mail, Morales did not
16:47:50 9 correct her and say: I am still the ESGR person.
16:47:58 10 And that deception continued up until June of 2010,
16:48:04 11 when Morales finally got around to resigning the ESGR
16:48:11 12 position.
16:48:20 13 When Morales began working with the National Guard,
16:48:23 14 what's the first thing she did?
16:48:25 15 Well, not the first thing she did, but what she did
16:48:30 16 was fill out the automatic deposit wire form that
16:48:37 17 permitted the National Guard to send moneys directly
16:48:39 18 into her checking account.
16:48:45 19 She did that knowing she was a full-time employee
16:48:48 20 of the ESGR, knowing that the National Guard would not
16:48:57 21 hire her if they knew she was a full-time ESGR person.
16:49:04 22 And Cills's e-mail proves the deception, I submit
16:49:10 23 to you. Cills's e-mail proves the deception.
16:49:14 24 And I think you saw defense counsel try to
16:49:19 25 manipulate the meaning of "will," I think. I think

16:49:27 1 "will" was the word, and whether or not it was future or
16:49:30 2 past.

16:49:30 3 But it was what it was. She said what she said: I
16:49:35 4 am -- Hignite told me to stay on as a volunteer.

16:49:42 5 And that's what she did, and you'll see the e-mail.

16:49:55 6 For Count 3 through Count 36, it's for wire fraud.

16:50:03 7 And how do we prove wire fraud?

16:50:05 8 We prove wire fraud to show that the deception, the
16:50:10 9 scheme to get money from the National Guard existed,
16:50:15 10 pretending to be a volunteer when she knew she was being
16:50:26 11 paid. Hignite, the MPSC contractor, her boss,
16:50:32 12 basically, he didn't even know.

16:50:35 13 His testimony, he didn't even know she was a
16:50:38 14 full-time member of the National Guard.

16:50:39 15 Because he is where? He is in the States.

16:50:43 16 Who supervises the defendant in the ESGR position
16:50:48 17 in St. Thomas? Nobody.

16:50:50 18 What does she do? She sends monthly reports to
16:50:54 19 Hignite in the States. And as long as Hignite gets his
16:51:00 20 report, he assumes she's doing the work. But he has no
16:51:04 21 idea that she's a full-time employee of the Virgin
16:51:10 22 Islands National Guard. And you heard him testify to
16:51:12 23 that.

16:51:17 24 So the intent to defraud, I submit to you, the
16:51:21 25 evidence is clear of that intend to defraud.

16:51:25 1 And the use of the wire, every time that the Virgin
16:51:32 2 Islands National Guard paid Ms. Morales, Major Morales,
16:51:39 3 it went from a bank in Cleveland, Ohio, to a bank in
16:51:52 4 Texas, Arlington, Texas, I think it was.

16:52:02 5 And every time she permitted the National Guard to
16:52:05 6 send a wire for payment to her account at the USAA in
16:52:13 7 Texas, she was committing wire fraud. She knew if the
16:52:19 8 National Guard knew she was employed full-time for the
16:52:23 9 ESGR, that she would not be holding a National Guard
16:52:27 10 job.

16:52:27 11 And the smoke screen is: Well, nobody else could
16:52:36 12 do this work. They recruited me for the National Guard.
16:52:43 13 They recruited me for the ESGR.

16:52:46 14 She is a machine. She knows how to get things
16:52:54 15 done.

16:52:54 16 But that's all besides the point, isn't it? It's
16:53:03 17 all besides the point whether you do the job or get
16:53:07 18 somebody to assist you to do the job. Because you heard
16:53:09 19 the testimony from Lescott that she prepared PEPAS
16:53:17 20 report, she prepared the monthly report, sent them to
16:53:21 21 Morales.

16:53:22 22 Not even Ms. Lescott, who is her cocontractor, who
16:53:25 23 worked tight with her from October of 2010 to when
16:53:31 24 Ms. Morales left in June of 2011, she had no idea that
16:53:40 25 Sherrymae Morales is a full-time National Guard

16:53:44 1 employee. She didn't have a clue.

16:53:47 2 There was deception, and that deception permitted
16:53:56 3 her to work for the National Guard and to send -- to
16:53:59 4 have wires go to her account.

16:54:04 5 This case is not complicated. It's not. It's a
16:54:12 6 scheme that actually worked because of the former
16:54:20 7 position that Ms. Morales held, that Major Morales held.
16:54:25 8 She held it for three years.

16:54:27 9 And folks just got so used to seeing her in the
16:54:32 10 position, that even when she came on board full-time
16:54:38 11 with the Guard, they were still going to her for
16:54:40 12 assistance.

16:54:43 13 But they weren't just going to her. Other members
16:54:46 14 of the Guard were volunteering. And you heard that
16:54:48 15 testimony.

16:54:50 16 So when Major James met Morales in 2010 and her
16:54:59 17 reemployment from Cuba, and she knows Morales is in the
16:55:03 18 Guard and she says to her: Well, what are you doing
16:55:06 19 here?

16:55:07 20 Because as a full-time member of the Guard, a
16:55:10 21 military tech, she wasn't suppose to be there.

16:55:14 22 What are you doing here?

16:55:16 23 And her response is: Oh, I'm volunteering.

16:55:23 24 Why utter that? Why say that?

16:55:27 25 If you're the paid ESGR representative and you

16:55:31 1 weren't trying to hide that fact, why do you tell the
16:55:36 2 JAG, the judge advocate general, of the Virgin Islands
16:55:41 3 National Guard, coming back from Cuba, that: I am just
16:55:48 4 here as a volunteer?

16:55:51 5 Deception.

16:55:57 6 The National Guard was sending money into Morales's
16:56:04 7 account, and she was happy with that, and she permitted
16:56:10 8 it to continue and she didn't want it to stop and she
16:56:20 9 just kept her mouth shut.

16:56:25 10 That's deception. That's fraud. So, nothing
16:56:37 11 complicated about this case.

16:56:41 12 And Mrs. Morales took the witness stand. You heard
16:56:44 13 her testify. And basically, her testimony is nobody
16:56:51 14 else knew or -- let me rephrase that -- General --
16:57:06 15 sorry -- General Lewis, General Rivera, Marise James,
16:57:12 16 Cills, all of them knew that she was the full-time ESGR,
16:57:23 17 in spite of the fact that each and every one of them
16:57:26 18 took that witness stand and said: We did not have a
16:57:28 19 clue. We thought she was volunteering. That's what she
16:57:32 20 led us to believe.

16:57:34 21 There's no direct supervision. She isn't paid
16:57:37 22 through the National Guard. MPSC pays her.

16:57:43 23 She has no supervision in St. Thomas -- in the
16:57:45 24 Virgin Islands. Her supervisor is in the States.

16:57:53 25 The evidence, I think, is clear. I'm going to ask

16:57:56 1 you to go back to your jury room, deliberate, weigh the
16:58:02 2 evidence that you heard today and yesterday, and return
16:58:07 3 a verdict of guilty, because that is the only reasonable
16:58:16 4 verdict in this case.

16:58:17 5 You can't work 80 hours in a 40-hour week for
16:58:26 6 almost -- for more than a year, I think. So --
16:58:35 7 particularly someone with this defendant's experience
16:58:39 8 and knowledge. It only happens by a plan, by a scheme.
16:58:43 9 She employed it. She utilized it to her benefit, and
16:58:48 10 she is here to answer for it, eventually, today.

16:58:50 11 Thank you.

16:58:53 12 THE COURT: Thank you, Attorney Potter.
16:58:55 13 Attorney Jupiter?

16:59:09 14 CLOSING ARGUMENT BY THE DEFENDANT

16:59:09 15 MR. JUPITER: Good afternoon.

16:59:11 16 Sherrymae Morales didn't steal anything from the
16:59:15 17 Virgin Islands National Guard. Sherrymae Morales is not
16:59:17 18 guilty.

16:59:18 19 Ladies and gentlemen of the jury, Baron Hignite
16:59:21 20 came in here as the government's witness, and he told
16:59:25 21 you that in March or February of 2010, that Sherrymae
16:59:34 22 Morales told him that she was going to be hired as
16:59:40 23 military technician. That was the government's witness
16:59:45 24 who told you that she said: I got a full-time position
16:59:51 25 with the National Guard.

16:59:55 1 Baron Hignite told you that in September of 2010,
17:00:03 2 he contacted both Colonel Lewis and Colonel Cills to get
17:00:11 3 their concurrence to rehire Sherrymae Morales as the
17:00:22 4 ESGR person for the Virgin Islands National Guard; the
17:00:25 5 government's witness.

17:00:27 6 Baron Hignite told you that he sent the e-mail
17:00:35 7 that's been marked as Defendant's Exhibit Number 9, to
17:00:39 8 notify Colonel Lewis that he rehired Sherrymae Morales.
17:00:46 9 And you'll see the e-mail in evidence.

17:00:51 10 Ladies and gentlemen, Sherrymae Morales is not
17:00:56 11 guilty. She didn't have any intent to scheme or to
17:01:00 12 defraud.

17:01:01 13 As you saw from the evidence that you saw these
17:01:04 14 last two days, that you heard over these last two days,
17:01:09 15 the government's witnesses in very important respects
17:01:12 16 were consistent with exactly what we told you in
17:01:16 17 opening, and what we told you, what Ms. Morales came and
17:01:21 18 told you herself.

17:01:22 19 What was her intent, her intent when she took this
17:01:28 20 position, the employer support for the Guard and the
17:01:33 21 Reserve, the ESGR contract?

17:01:35 22 What would she have been doing?

17:01:36 23 She had been doing contracting work.

17:01:39 24 How does she work?

17:01:42 25 She's a workaholic. She's that person you call

17:01:50 1 from -- can't see at morning to can't see at night, and
17:01:53 2 she's at work. That's what she's been doing.

17:02:14 3 Can you hear me okay?

17:02:15 4 Is that better?

17:02:16 5 All right. Thank you, Mrs. Brann.

17:02:20 6 Now, there are a number of pieces of evidence, I
17:02:24 7 think, that are very telling about what happened
17:02:30 8 four years ago. But the truth of the matter -- four and
17:02:33 9 five years ago.

17:02:33 10 But the truth of the matter is that it's impossible
17:02:36 11 to present that whole story. And ladies and gentlemen,
17:02:41 12 let's make no mistake about where we are. We are in
17:02:46 13 criminal court.

17:02:48 14 There are number of things I think the government
17:02:50 15 wants you to consider and wants this case to be about,
17:02:53 16 that it's just not about.

17:02:57 17 I want you to be very careful when you look at the
17:03:00 18 charges in this case. Ms. Morales, mind you, is being
17:03:05 19 charged in other counts that are going to come back to
17:03:09 20 you with an intent to -- with a scheme to defraud the
17:03:15 21 Virgin Islands National Guard.

17:03:19 22 All of the counts, whether it's Counts 3 through
17:03:25 23 36, Counts 1 and 2, all of them relate to a salary,
17:03:30 24 payments, payments made by the Virgin Islands National
17:03:36 25 Guard.

17:03:36 1 The government's own witness, Colonel Lewis,
17:03:42 2 Ms. Morales's supervisor, testified very clearly, as did
17:03:46 3 his colleagues, that Ms. Morales worked for the
17:03:52 4 Virgin Islands National Guard. She did everything that
17:03:54 5 was asked of her. She worked numerous hours.

17:04:00 6 There was no testimony at all that any of the
17:04:07 7 payments that were paid to Sherrymae Morales were not
17:04:10 8 earned by Sherrymae Morales.

17:04:14 9 There was no testimony that Ms. Morales was hired
17:04:20 10 to do anything other than the things that Colonel Lewis
17:04:23 11 asked her to do, and she didn't perform at an adequate
17:04:29 12 level.

17:04:30 13 Ladies and gentlemen of the jury, she performed at
17:04:31 14 a super level. That's just a fact. Okay?

17:04:35 15 It wasn't just Colonel Lewis who relied on her --
17:04:40 16 General Lewis, General Rivera, Aubrey Ruan. Aubrey
17:04:44 17 Ruan, who testified that he asked for an investigation
17:04:49 18 of Ms. Morales in early 2010, Aubrey Ruan asked
17:04:58 19 Ms. Morales to stay on with the Virgin Islands National
17:05:02 20 Guard.

17:05:02 21 And the Court has instructed you -- although you
17:05:06 22 have a lot of instructions, the Court has instructed you
17:05:10 23 with respect, definitely with respect to Counts 1 and 2,
17:05:16 24 the government has to prove a certain amount of money
17:05:20 25 was stolen, that there was theft.

17:05:24 1 The government wants you to consider, even though
17:05:27 2 they didn't charge, the government wants you to consider
17:05:32 3 all of this business about MPSC.

17:05:35 4 It's irrelevant. She's not charged with stealing a
17:05:41 5 dime from MPSC. That's not the charge before you. All
17:05:44 6 the charges before you relate to the Virgin Islands
17:05:46 7 National Guard.

17:05:49 8 The government has to produce enough evidence for
17:05:52 9 you to find that she stole from the Virgin Islands
17:05:56 10 National Guard, when their own witnesses tell you that
17:06:00 11 she earned every bit of that, that she put in those
17:06:03 12 hours, that she was there from early in the morning
17:06:06 13 until late at night.

17:06:11 14 Those were legitimate salary payments. And that's
17:06:15 15 what they're asking you to find that she stole.

17:06:21 16 Now, Colonel Lewis also was notified of the rehire.
17:06:26 17 And Colonel Lewis himself testified about the fact that
17:06:31 18 he were with Ms. Morales in replacing -- in her
17:06:37 19 replacement with Janice Aelleyne.

17:06:43 20 Major Aelleyne came in here and testified about
17:06:46 21 that as well, gave corroboration to it, as did Sherrymae
17:06:52 22 Morales.

17:06:54 23 Baron Hignite corroborated Ms. Morales in talking
17:06:57 24 about the replacement, that there was a need for
17:07:02 25 replacement, and that all along Sherrymae Morales was

17:07:08 1 submitting people to him to replace her.

17:07:16 2 How do you find an intent to deceive, an intent to
17:07:20 3 defraud?

17:07:21 4 Isn't the whole purpose of defrauding someone, is
17:07:25 5 that you want to keep doing it?

17:07:28 6 A fraudster doesn't try to find someone to replace
17:07:37 7 them in doing the fraud. She's not a fraudster. No.
17:07:41 8 Because she didn't want to continue in the position, and
17:07:44 9 she told Baron Hignite that in 2010.

17:07:47 10 Now, is it so hard to believe that somebody
17:07:52 11 actually cared about this ESGR and cared about the
17:07:54 12 soldiers who were being deployed and being returned and
17:07:57 13 had to be reintegrated in everyday life?

17:08:03 14 She didn't just do it at the adequate level. She
17:08:10 15 did it at a great level. She built that volunteer base
17:08:13 16 up. She had the briefings. Weekends. She had the
17:08:18 17 reports done. She had the events going on.

17:08:22 18 She did these things, ladies and gentlemen, and
17:08:26 19 it's clear when these events -- when this stuff was
17:08:30 20 going to be done. She is meeting with volunteers who
17:08:34 21 work full-time. When is she going to meet with them?

17:08:38 22 She is meeting with military personnel who worked
17:08:42 23 for them full-time. When is she going to meet with
17:08:44 24 them?

17:08:44 25 She is having blue ribbon events. When do they

17:08:49 1 occur? Over the weekends.

17:08:51 2 She came to learn her job over those three years.

17:08:55 3 Was there anything entered into evidence by the
17:08:59 4 government as to when she didn't perform those duties
17:09:06 5 between 2007 and 2010?

17:09:09 6 We have some afterwards, right? I mean, they did
17:09:13 7 enter the e-mails from Dazarene Lescott, e-mail at 4:37
17:09:21 8 in the morning.

17:09:22 9 Who works at 4:37 in the morning?

17:09:27 10 An e-mail at 7:55 at night? Who works at 7:55 at
17:09:35 11 night?

17:09:40 12 Who functions for a volunteer as the ESGR contract
17:09:49 13 person from September 2010, going all the way to June of
17:09:55 14 2011?

17:09:58 15 And how do you -- how does the government square
17:10:04 16 the fact that Colonel Lewis and Colonel Cills were
17:10:07 17 notified of this in September of 2010. And then they
17:10:13 18 said: We were so surprised later on to find this out.

17:10:17 19 I'll tell you what happened, ladies and gentlemen.
17:10:21 20 It's something very simple that happened. And that was
17:10:25 21 somebody got mad and started an investigation. Okay?

17:10:30 22 And everybody wanted to disassociate themselves
17:10:33 23 with this. Why?

17:10:39 24 Because it's easier to do it that way. It's easier
17:10:42 25 to do it that way rather than saying: Yeah, this is,

17:10:45 1 this is how it was done.

17:10:48 2 There's a difference between how things appear on
17:10:53 3 paper and how they are actually done. You look at it.
17:10:58 4 When you put in -- how many of you -- how many of us
17:11:02 5 actually punch a clock any more? We don't do that.

17:11:06 6 And as much as Mr. Potter tried to get Captain
17:11:14 7 Lobbenmeier, Ms. Lobbenmeier to say that there's a
17:11:19 8 document that Ms. Morales is suppose to submit for her
17:11:24 9 leave, for her time sheets, Captain Lobbenmeier said:
17:11:30 10 No, the employee doesn't do anything to submit the time
17:11:35 11 sheet. The employee doesn't even see the time that's
17:11:37 12 being entered.

17:11:39 13 The employee is not a part of that process. She
17:11:43 14 doesn't submit any time sheets. And he tried and tried,
17:11:47 15 asked her seven different ways till Sunday, and she kept
17:11:51 16 saying the same thing: No, there's nothing. It's
17:11:54 17 submitted. The supervisor certifies it, and then we
17:12:02 18 enter it. The employee has nothing to do with that.

17:12:09 19 The employee doesn't say: Well, I was at work.

17:12:13 20 And ladies and gentlemen, you know, your employers
17:12:17 21 through the years have different ways of having how your
17:12:22 22 time is certified, how your time is submitted, and at
17:12:27 23 the end of the day you get a paycheck.

17:12:29 24 Some of you, sometimes you may have different ways
17:12:32 25 of how that's done. But in this particular process,

17:12:38 1 Ms. Morales is not part of submitting the time sheet
17:12:42 2 that is submitted to -- well, the DFAS system to submit
17:12:49 3 a check.

17:13:01 4 Now, you also heard that Colonel Ruan said that he
17:13:07 5 made this inquiry about these two positions, and that it
17:13:14 6 was two months before he heard anything back from
17:13:17 7 Colonel Rivera and Colonel Lewis.

17:13:21 8 When Colonel Rivera took the stand he said: I
17:13:24 9 immediately called for an investigation.

17:13:27 10 But when I asked him: Would that be accurate, that
17:13:29 11 there was this delay?

17:13:31 12 Now why is that important?

17:13:33 13 Well, ladies and gentlemen, as I stated before,
17:13:38 14 doesn't that affect the credibility of the government's
17:13:41 15 witnesses?

17:13:44 16 Doesn't that show you that they have a certain bias
17:13:49 17 in how they testify?

17:13:52 18 Doesn't that indicate to you, if in fact there's
17:13:56 19 this inquiry going on, and there's this long delay in
17:14:02 20 terms of what's going to happen after that, and who ends
17:14:07 21 up reviewing the investigation?

17:14:12 22 Marise James.

17:14:15 23 Now, we don't have a burden of proving anything.
17:14:20 24 The government has the burden of bringing to you
17:14:24 25 objective testimony to prove their case beyond a

17:14:31 1 reasonable doubt.

17:14:31 2 Now, this is an office where you have ESGR
17:14:35 3 activities going on. You have funding activities going
17:14:41 4 on. You have Ms. Morales doing her military tech
17:14:47 5 position. You have meetings going on.

17:14:48 6 And what do we have? Four, five -- like four, five
17:14:53 7 e-mails over a year. Pick out a little e-mail here and
17:15:02 8 a little e-mail there.

17:15:03 9 And even those don't even connect with each other.
17:15:05 10 They contradict each other. They contradict the e-mail
17:15:08 11 that Baron Hignite sent to Colonel Lewis, and the
17:15:13 12 testimony from their own witness.

17:15:14 13 Just a little bit of stuff. Any given day you
17:15:18 14 might have 20 e-mails, some of you, in your jobs and in
17:15:22 15 your social life.

17:15:23 16 This is somebody who worked over 80 hours a week,
17:15:29 17 who worked from early in the morning to late at night,
17:15:32 18 and they pick up four to five little e-mails, two
17:15:37 19 e-mails -- one e-mail between her and Colonel Cills, who
17:15:40 20 is in charge of budgeting.

17:15:42 21 And what did Baron Hignite tell you about the
17:15:45 22 budgeting?

17:15:45 23 It can only be done by the ESGR contractor, not by
17:15:49 24 a volunteer. It can't be done by a volunteer.

17:15:53 25 She knows that because she's the person in charge

17:15:56 1 of the -- in charge of the budgeting.

17:16:04 2 It doesn't come together. These are just their
17:16:07 3 witnesses.

17:16:10 4 Now, ladies and gentlemen of the jury, we don't
17:16:12 5 have a burden of trying to put together for you what
17:16:16 6 happened four or five years ago. That's not fair to us.
17:16:23 7 But we can at least present to you the people who saw
17:16:28 8 and who worked and who worked hard at what was going on
17:16:36 9 at the Virgin Islands National Guard.

17:16:38 10 Captain Wanda Williams: Of course she had the ESGR
17:16:44 11 position and she had the military tech position.

17:16:50 12 Major Aelleyne: My wife was going to replace her
17:16:56 13 when she finished her school year.

17:16:58 14 When does the school year finish? When did she do
17:17:01 15 it?

17:17:01 16 The summer.

17:17:12 17 And Major Morales brought it all together for you
17:17:16 18 to explain: Look, when I took that position, the
17:17:19 19 military tech position, I didn't want to keep the ESGR
17:17:23 20 position. I tried to get a replacement consistent with
17:17:29 21 what Baron Hignite said. And when I got this major
17:17:35 22 assignment from Colonel Lewis, I said "I just can't do
17:17:39 23 it any more," and so I resigned the ESGR position.

17:17:45 24 And if you look -- and she testified as to when
17:17:48 25 that VING leadership conference was. It was in

17:17:53 1 September of 2010. And it's only after that, that she
17:17:58 2 goes back to ESGR.

17:18:02 3 When she couldn't do the work, ladies and
17:18:06 4 gentlemen, she resigned. When she wasn't available, she
17:18:10 5 took leave.

17:18:16 6 The government has got a serious burden. They've
17:18:18 7 got serious work, and they failed short, because they
17:18:23 8 want you to rely on innuendo and speculation, and they
17:18:29 9 want you to take the word of witnesses who, who are not
17:18:38 10 credible and who are inconsistent with their own
17:18:40 11 evidence.

17:18:44 12 She earned the money. She worked hard. This was
17:18:48 13 her salary. She stayed in a position because she was
17:18:51 14 asked to. She performed admirably. She didn't steal
17:18:58 15 anything. She didn't deceive anyone. And they have not
17:19:03 16 proven anything of the sort.

17:19:10 17 Ladies and gentlemen, you know, we all have serious
17:19:23 18 jobs, and in this instance you all have a serious job.
17:19:28 19 Your job is -- well, you have Judge Gomez here, who is
17:19:32 20 the judge. You are the judges of the facts.

17:19:38 21 You notice that every time you came in the
17:19:39 22 courtroom, we all stood up, because your role is
17:19:43 23 critically important. And it's really a question in
17:19:47 24 this case of whether or not we're going to ask the
17:19:50 25 government to prove their case beyond a reasonable doubt

17:19:53 1 or not.

17:19:55 2 Because they failed miserably in that, because they
17:20:02 3 didn't present to you a picture that's consistent or
17:20:05 4 complete about what happened between 2010 and 2011.

17:20:13 5 The question is, is whether or not you can follow
17:20:18 6 that burden of proof. Because if you do, the answer is
17:20:22 7 very easy. The answer is not guilty on each and every
17:20:27 8 count.

17:20:27 9 Now before I sit down, let me point a couple other
17:20:30 10 things out to you, ladies and gentlemen, because
17:20:34 11 sometimes the government has to prove each and every
17:20:37 12 count.

17:20:37 13 We submit there was no proof of any intent to
17:20:40 14 defraud. So that really takes care of the work in terms
17:20:50 15 of not guilty on each count.

17:20:51 16 And you're also going to look, there are some
17:20:53 17 counts that even deal with this period where she's not
17:20:57 18 even working at ESGR. Obviously those are -- I don't
17:21:03 19 know what the government's theory is on those counts.

17:21:07 20 But also, ladies and gentlemen, you know, each one
17:21:12 21 of these counts would be asking you the question of
17:21:19 22 whether or not she defrauded the Virgin Islands National
17:21:24 23 Guard and whether or not she made any kind of a material
17:21:28 24 misrepresentation to them.

17:21:31 25 You've been instructed what's material in this

17:21:34 1 case. And in this case, and once again they failed
17:21:40 2 miserably with that.

17:21:41 3 Well, ladies and gentlemen, on behalf of
17:21:45 4 Ms. Morales, I thank you for your service. We trust
17:21:47 5 that you will -- you have served admirably, and you will
17:21:51 6 continue to do so. We ask you to return a verdict of
17:21:55 7 not guilty on each and every count.

17:21:58 8 Thank you.

17:22:00 9 THE COURT: Thank you, Attorney Jupiter.
17:22:02 10 Attorney Potter?

17:22:12 11 REBUTTAL ARGUMENT BY THE GOVERNMENT

17:22:12 12 MR. POTTER: I want to go back to what
17:22:15 13 Mr. Hignite said.

17:22:19 14 Hignite said that he spoke to Morales a week before
17:22:26 15 she submitted her resignation to him in June, June of
17:22:32 16 2010. And his testimony was: She told me she was
17:22:37 17 returning to the Guard.

17:22:41 18 June of 2010, not March. He corrected himself on
17:22:47 19 the stand. He said it was June. And we submitted to
17:22:50 20 you the letter of resignation that the defendant sent to
17:22:57 21 Mr. Hignite.

17:22:59 22 So don't believe that somehow, in March, Hignite
17:23:07 23 thought that she had resigned. It was June, because she
17:23:12 24 was still being paid from March up until June. Okay?

17:23:18 25 I just want it to be clear.

17:23:21 1 And again, Attorney Jupiter talks about getting
17:23:25 2 e-mails at 4:00 in the morning, who does that, and
17:23:28 3 working at 7:55 in the evening, and sending e-mails in
17:23:37 4 the evening.

17:23:38 5 But it was Ms. Lescott who sent the e-mail in the
17:23:43 6 evening. She was being paid. Ms. Morales was only
17:23:46 7 claiming to be volunteering.

17:23:49 8 So when she responded to that e-mail at 4:30 in the
17:23:54 9 morning, she was being paid. It's just that the folks
17:24:05 10 in the Guard, they didn't know she was being paid. But
17:24:12 11 she knew. So she was working hard, because she was
17:24:16 12 being paid.

17:24:18 13 Does that mean fraud did not occur in her getting
17:24:22 14 that job?

17:24:24 15 Their argument seems to be: Okay, if you do a good
17:24:28 16 job, if you commit fraud and you do a good job, it's
17:24:32 17 okay.

17:24:34 18 So I guess the other argument is: If you commit
17:24:38 19 fraud and you don't do a good job, well, maybe that's
17:24:41 20 not okay.

17:24:42 21 Fraud is fraud. Getting the job through fraud is
17:24:47 22 fraud.

17:25:03 23 The defendant, she took the stand. When she took
17:25:09 24 the stand, she put her credibility on the line.

17:25:14 25 I submit to you that when she told Mr. Hignite that

17:25:28 1 she wanted to come back to the Guard and Mr. Hignite
17:25:31 2 brought her back into the Guard -- and I think she said
17:25:39 3 in 2011, 2010, December, General Lewis left and Mr. Ruan
17:25:49 4 took over as her supervisor.

17:25:53 5 And the question was: You didn't tell your new
17:25:58 6 supervisor, Mr. Ruan, you know, "I'm your full-time
17:26:05 7 military tech, but I'm also being paid as a full-time
17:26:10 8 ESGR."

17:26:10 9 Her response was: Well, he's supposed to know.

17:26:13 10 Well, he's your brand new supervisor coming in. He
17:26:16 11 testified he didn't have a clue. He testified he found
17:26:21 12 out -- as a matter of fact, he said he called the MPSC
17:26:26 13 to ask them: Who is our ESGR representative? I don't
17:26:31 14 know who it is. Who is it?

17:26:34 15 And for the first time he found out he was told:
17:26:39 16 Oh, that's Sherrymae Morales.

17:26:42 17 He's like: Huh? She can't be ESGR. She is my
17:26:50 18 full-time military tech.

17:26:52 19 And then he started an investigation. He had not a
17:26:56 20 clue. And she was full-time in the military, in the
17:27:05 21 National Guard. Supervising her from January to May,
17:27:15 22 five months, he didn't have a clue.

17:27:19 23 If he had a clue, he wouldn't ask for an
17:27:22 24 investigation, would he?

17:27:34 25 And then the defendant says: Well, you know, I was

17:27:37 1 always trying to find a replacement. I was always
17:27:40 2 trying to find a replacement for -- herself, because she
17:27:44 3 didn't really want the job.

17:27:47 4 She's being paid two salaries. Every pay period,
17:27:54 5 she's getting two of them. She didn't want the job.

17:27:57 6 She really, really wanted to end it and find
17:28:01 7 somebody to replace her, and it took her a year? It
17:28:07 8 took a year, in her view.

17:28:12 9 She didn't want to be replaced. She enjoyed the
17:28:15 10 two salaries.

17:28:18 11 And if the issue of her dual employment didn't come
17:28:25 12 up, she probably would have kept the two salaries,
17:28:36 13 89,000 and I think it's 64, somewhere close to that,
17:28:40 14 thousand. That's in excess of \$150,000 a year.

17:29:06 15 THE CLERK: Two more minutes.

17:29:08 16 MR. POTTER: Yes.

17:29:09 17 Now, it's not a difficult case. We know. We don't
17:29:13 18 have to have an MPA, master's in public administration,
17:29:19 19 we don't have to have big lofty positions, big lofty
17:29:23 20 education to know you can't do it. You can't submit
17:29:31 21 80 hours, working 40 hours. You cannot do it. And she
17:29:39 22 hid it. She hid it.

17:30:00 23 The judge has told you and I will tell you, this is
17:30:03 24 a very important case and it requires your attention,
17:30:11 25 your attention to detail, your taking sense from

17:30:15 1 nonsense, your looking at the evidence objectively.

17:30:27 2 And if you do that and you make your ruling without
17:30:29 3 fail, and you make your ruling without passion, there's
17:30:34 4 only one true verdict that you could come up with, and
17:30:38 5 that verdict is guilty, guilty on each and every count.
17:30:43 6 And it's guilty on each and every count because she is
17:30:47 7 guilty on each and every count. She devised a scheme
17:30:55 8 and she got caught.

17:31:01 9 The testimony of the government witnesses, I keep
17:31:07 10 going back to that very important e-mail, where she
17:31:12 11 confirmed she's volunteering. That's -- it's telling.
17:31:20 12 If you're not volunteering, you don't say you're
17:31:22 13 volunteering.

17:31:22 14 THE CLERK: One more minute.

17:31:24 15 MR. POTTER: The conversation with Major James,
17:31:26 16 not just anyone within the Guard, but the -- I'm
17:31:31 17 repeating it -- the JAG, and you come up to her face and
17:31:36 18 bold-facedly tell her a lie: I am a volunteer. That's
17:31:44 19 why I am here.

17:31:46 20 That was a lie.

17:31:49 21 Why did she do that?

17:31:55 22 Because she would have had to have said: I am here
17:31:58 23 as the paid ESGR person.

17:32:00 24 And Ms. James knew: She's a full-time Guard,
17:32:04 25 working 9:00 to 5:00, and she can't be here as a paid

17:32:10 1 ESGR person. That's why she said what she said.

17:32:18 2 The evidence is before you. Take your time,
17:32:23 3 deliberate, and again without fear, without passion,
17:32:28 4 return the only verdict that is appropriate in this
17:32:33 5 case, and that verdict is guilty on each and every count
17:32:36 6 of the government's indictment.

17:32:37 7 I thank you.

17:32:38 8 THE COURT: All right. Thank you, Attorney
17:32:40 9 Potter.

17:32:40 10 Ladies and gentlemen, that's where we're going to
17:32:42 11 end for the night.

17:32:43 12 Let me thank you for your patience and cooperation,
17:32:45 13 and give you some instructions.

17:32:47 14 You have a lot of information before you now. You
17:32:49 15 have the, all the evidence, the attorneys' arguments and
17:32:54 16 my charge on the law.

17:32:55 17 It is very important at this time that you resist
17:32:57 18 any temptation, any urge, any invitation, any
17:33:01 19 inclination, to do any sort of research on this case, to
17:33:06 20 talk to anyone on this case. Do not do that. The only
17:33:09 21 things you are to consider are two things: one, the
17:33:11 22 evidence that came in in this case; two, the
17:33:14 23 instructions on the law that I gave you.

17:33:16 24 You'll have a chance to deliberate tomorrow. There
17:33:19 25 are a few final instructions I'll give you in the

17:33:22 1 morning.

17:33:22 2 Until then, do not do any research. Do not talk to
17:33:25 3 anyone about this case. We take that extremely serious.

17:33:28 4 If anyone attempts to approach you about this case,
17:33:31 5 bring it to the Court's attention promptly and we will
17:33:34 6 address it promptly.

17:33:35 7 Keep an open mind. You haven't begun your
17:33:38 8 deliberations yet. You'll do that tomorrow.

17:33:41 9 We will begin at 8:15 tomorrow, so please be here
17:33:47 10 at 8:00. I'll give you final instructions and you'll
17:33:50 11 begin your deliberations. The final portion of the
17:33:52 12 instructions should be no more than five minutes, and
17:33:54 13 then you'll begin your deliberations.

17:33:56 14 Like I said yesterday, everyone has to be here by
17:34:00 15 8:00 so that you can make your order for lunch, et
17:34:04 16 cetera, so that we can start on time. If one person is
17:34:06 17 late, we cannot start. So I urge you to be here on time
17:34:10 18 so we can proceed on time.

17:34:12 19 All right. With that, let me wish you a pleasant
17:34:15 20 evening, and I'll see you tomorrow morning.

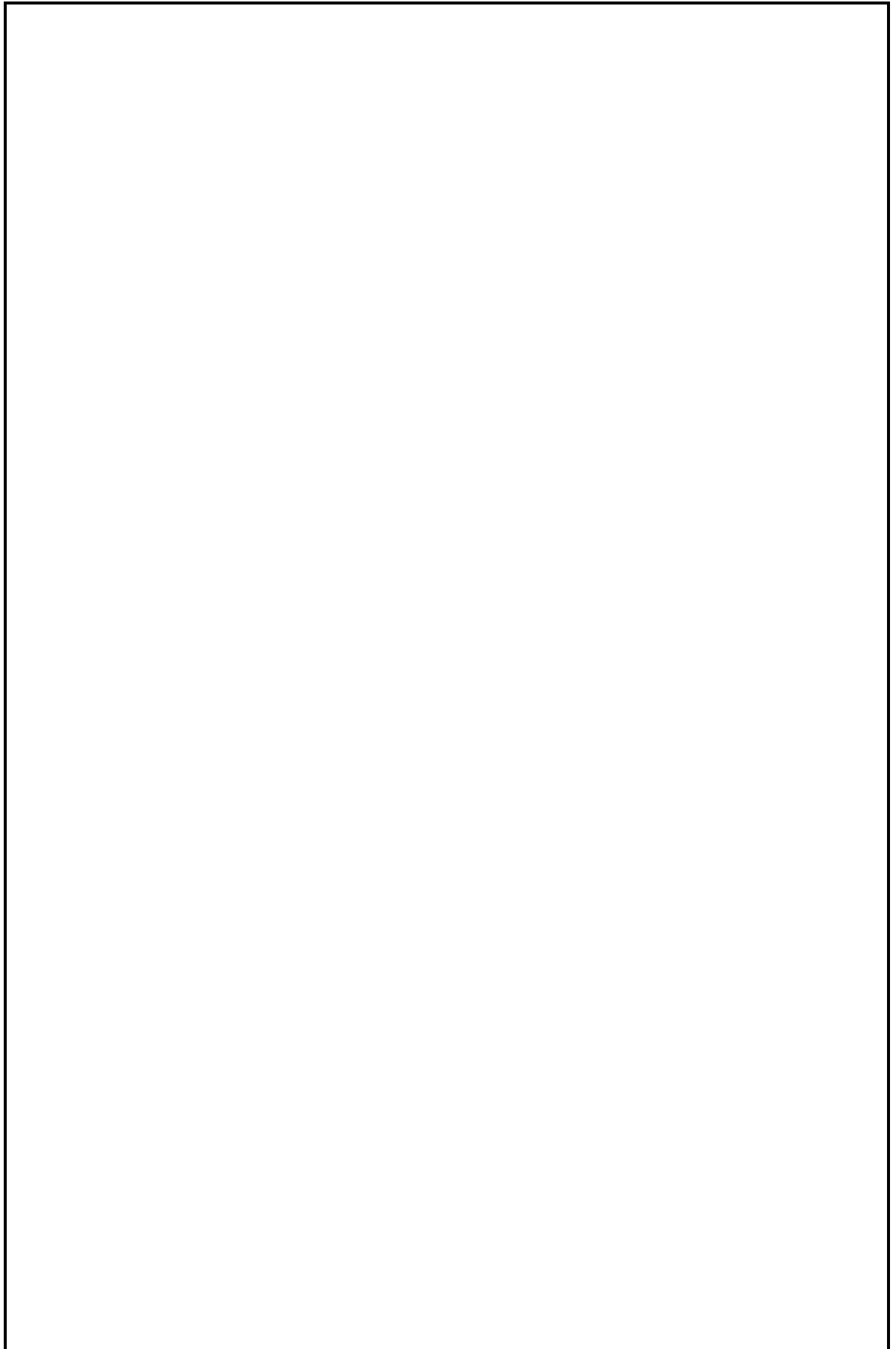
17:34:19 21 (Jury out.)

17:34:41 22 THE COURT: Counsel, I'll see you tomorrow at
17:34:44 23 8:15. Have a pleasant evening.

24 (Court in recess, 5:34 p.m.)

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CERTIFICATE

This document is hereby certified
to be a true and accurate transcript
of the foregoing proceedings.

/s _____
Chandra Kean, RMR
Official Court Reporter

DATE